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Public Administration Select
Committee

Machinery of Government Changes

Seventh Report of Session 2006–07

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evidence*

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The Public Administration Select Committee

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Summary

Recent disputes over the creation of a new Ministry of Justice have demonstrated the need for a better way of making changes to the machinery of government. The consequences of such changes can be far-reaching, and changes can carry significant costs, financial or otherwise. Yet at present the Prime Minister can effectively make almost any change at will. There needs to be a mechanism to ensure that changes are fully considered before implementation, and that the reasoning behind them stands up to scrutiny.

The Ministers of the Crown Act 1975 ought to act as a Parliamentary check on the Prime Minister's power. At present, it does not serve that function well. In principle, Parliament has the power to derail a change, even though this might take place after the event. In reality, for the vast majority of changes, Government effectively has the power to decide whether Parliament gets a vote or even a debate. The Government should at the very least undertake to provide timely debates on significant changes to the machinery of government.

However, even with such an undertaking, we do not believe Parliament's current powers would be strong enough. We welcome the advance publication of a paper setting out the rationale for creating a Ministry of Justice, although this paper might usefully have been published as a consultation exercise. More effective, though, would be the prospect of a parliamentary vote. Parliamentary assent would give greater scrutiny, and hence greater legitimacy, to the Government's actions.

This report does not consider the merits or demerits of any particular machinery of government changes—it is for other Select Committees to do that. We do note, though, that the current machinery of government is still fundamentally the product of the Haldane Report, published in 1918. It is time for a fresh look at the entirety of the structure of government. We believe the time is ripe for a new Haldane inquiry.

1 Introduction

1. On 29 March 2007, the Prime Minister announced machinery of government changes to the Home Office and the Department for Constitutional Affairs.¹ The reforms have been widely questioned: critics include senior judges and former Home Secretaries from both sides of the House.² In addition, a new Prime Minister will shortly take office, and there has been much speculation on how the landscape of government might be redesigned.³ Other Committees are likely to look at specific proposals for change in their own policy areas; but it is timely to look now at *how* changes are made to the structure of government, and how they are scrutinised.

2. The performance of any organisation can be improved by having the right framework with which to deliver the services it provides. Government is no different, but the money it spends is public money, and the services it provides are crucial to the everyday lives of all its citizens. So the machinery of government needs to reflect changing circumstances, and any system for making such structural changes should be robust.

3. During our inquiry into Skills for Government, which is yet to report, we heard how significant the unintended consequences of machinery of government changes can be. Our predecessor Committee also considered this issue in its inquiry into the Royal Prerogative.⁴ Now that the issue has once again risen to political prominence, we have decided to look further. We took evidence on this matter from the former Cabinet Secretary Lord Butler of Brockwell, and from Professor Christopher Hood, the Gladstone Professor of Government at Oxford University. We also discussed it in evidence sessions with the current Cabinet Secretary and with the Minister for the Cabinet Office. We are grateful to the House of Commons Journal Office for their assistance. We have worked quickly, so that our conclusions are available before any changes are proposed by the new Prime Minister.

2 Transfers of functions

Magnitudes of changes

4. There is already an extensive literature on the nature and purpose of machinery of government changes. We need to be clear what is meant by the term “machinery of government changes”. Professor Christopher Pollitt’s definition—“the allocation and reallocation of functions between departments”⁵—is in wide circulation, and appears to correspond with usage in Whitehall. This definition excludes transfers within departments, including to executive agencies—such as the recent movement of border control from the

1 HC Deb, 29 March 2007, cols 133-135WS

2 See for example “Woolf fears Home Office Reforms”, *BBC News Online*, 24 April 2007, news.bbc.co.uk ; “Reid ‘wrong’ on Home Office split”, *BBC News Online*, 4 February 2007, news.bbc.co.uk; HC Deb, 9 May 2007, cols 149-151

3 See for example “Is Brown planning new break-ups”, *The Guardian*, 10 May 2007, p 14; “Winner takes it all?”, *The Observer*, 20 May 2007, p 10; “Brown at work on Whitehall shake-up”, *Financial Times*, 18 May 2007, p 1

4 Public Administration Select Committee, Fourth Report of Session 2003-04, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, HC 422

5 Pollitt, C., *Manipulating the Machine: Changing the Pattern of Ministerial Departments 1960-83* (London, 1984).

Home Office's Immigration and Nationality Directorate to the new Border and Immigration Agency. It also excludes the transfer of functions to or from any statutory public body.

5. Even within this seemingly narrow definition of machinery of government changes, however, changes can be of distinctly different magnitude. The recent transfer of the National Offender Management Service from the Home Office to the new Ministry of Justice is clearly a significant change to the way our public services are configured; it involves the transfer of many thousands of staff and two important public bodies in the prison and probation services. In contrast, the recent transfer of the private offices of the Leaders and Chief Whips of the two Houses of Parliament from the Privy Council Office to the Cabinet Office from April 2007 was far less radical. Different processes might be appropriate for different orders of machinery of government change; and we must bear in mind the magnitude of different proposed changes when we consider why changes are made and what their effects might be.

Why changes are made

6. The structure of British government is still shaped by the recommendations of the Haldane Report of 1918.⁶ That seminal report set out a basic principle of “defining the field of activity in the case of each Department according to the particular service which it renders to the community as a whole.”⁷ It advocated separate ministries for Health, Education, Finance, Foreign Affairs and Defence—all of which essentially remain. No fundamental reshaping has since taken place, although we have seen short-lived experiments, such as Churchill's “overlord ministers” of the 1950s or the “super-ministries” of the Heath era in the 1970s.

7. Despite the continuity of the basic structure, there has been no shortage of individual changes. These may be simply to increase administrative efficiency; but earlier studies such as that of Professor Christopher Pollitt have found the reasons for such change were more varied than this:⁸

- Some—about half, according to Pollitt—had indeed been undertaken for reasons of administrative efficiency, normally to give greater weight to a particular policy. The recent small scale reorganisation to create an Office of the Third Sector in the Cabinet Office is an example: it brought together the Active Communities Directorate of the Home Office with the Social Enterprise Unit, which was housed in the Department for Trade and Industry. This reflects the importance the Government currently accords to working with the Third Sector, and was matched with the designation of a Minister for the Third Sector.
- Just under a third of the cases studied by Pollitt were assessed as being driven by issues of personal chemistry; balancing the Cabinet, matching responsibilities to personalities and their capabilities, or similar reasons. Professor Hood cited the

6 Ministry of Reconstruction, *Report of the Machinery of Government Committee*, Cmd 9230, 1918

7 As above, p 8

8 Pollitt, C., *Manipulating the Machine: Changing the Pattern of Ministerial Departments 1960-83* (London, 1984).

example of the first Harold Wilson government, when, on Mr Wilson's arrival in Downing Street in 1964, the Treasury was split in two, and the ministerial roles were given to the two unsuccessful leadership candidates from the previous year, James Callaghan and George Brown. While there were both administrative and political reasons for this split, it is difficult to balance the weight accorded to the Prime Minister's different motivations.⁹

- Very few of the changes in Pollitt's study came about as a result of government taking on completely new functions. He believed that changes were more often made to give an impression of dynamism and modernisation.

8. Obviously this analysis is a matter of interpretation; Government would never publicly explain that it was changing the machinery of government to placate an individual or to give an impression of dynamism. Clearly, though, some of the reasons for amending the machinery of government may be less valid than others. Lord Butler had clear views that it was not usually advisable to reshape government for political reasons:

I think personality is usually the worst reason. There is a real risk, particularly at the time of the formation of a new government, that changes will be made ... to balance the political powers within the government or to give an important political figure a bigger job. Speaking as a civil servant, I do not think those are very good reasons.¹⁰

9. Lord Butler also made the observation that a large proportion of machinery of government changes take place in the first days of a new government. When a new Prime Minister has to make appointments, the structure of the departments has to be decided first so that it is clear what ministerial positions there are to be filled. Civil servants do have discussions with the political parties in advance of the formation of a government, but in the lead-up to a General Election, for example, Lord Butler considered that the Leader of the Opposition would be unlikely to be focused on the machinery of government. On arrival in Downing Street, decisions would then have to be made very quickly.¹¹

10. Professor Hood told us that there were two main schools of thought in the academic field.¹² One school held the view that government continually needs to adapt to political circumstances, internal and external, and that changes to the machinery were merely administrative reorganisations—so essentially (by implication) an internal government function.¹³ The other school of thought, to which he himself was inclined to subscribe, held that the process of consultation and decision on proposed changes should be widened, as a useful discipline on government.¹⁴ This is where the magnitude of change is relevant. We do not presume to define what constitutes a “significant” change to the machinery of government. One measure might be the number of staff transferred; another might be whether the change requires a Department to change its name. In practice, it is usually

9 Q 23

10 Q 21

11 Q 2

12 Q 4

13 see for example Chester, D. N. & Willson, F. M. G., *The Organization of British Central Government* (London, 1968).

14 Pollitt, C., *Manipulating the Machine: Changing the Pattern of Ministerial Departments 1960-83* (London, 1984).

obvious whether a change is significant. Whatever the definition, though, different orders of change may warrant different processes—and in particular, different levels of scrutiny.

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 law of unintended consequences

12. As Sir Robin Mountfield told us, machinery of government changes can matter. Ill-considered changes are potentially damaging:

I should also like to draw attention to the damaging effect of frequent changes of Departmental boundaries ... cutting up and merging different parts of different Departments is enormously more disruptive than Prime Ministers (without direct personal experience of such matters) generally envisage.¹⁵

There is, of course, a difference here between small administrative changes and significant reorganisations. We doubt, for example, that the transfer of the Privy Council Secretariat from the Privy Council Office to the DCA has been enormously disruptive. Nonetheless, it is clear that structural changes can have negative impacts, and in ways which are not always obvious.

13. One danger in reorganisation is loss of expertise. Rt Hon Nick Raynsford MP, a former housing and local government minister, considered that it takes a considerable amount of time for a knowledge base to be built up:

In general I think the areas where there was a continuity, both a ministerial continuity and an official continuity, tended to be the areas where you had the greatest strengths because there was an opportunity for the collective knowledge of the department to be used and deployed.¹⁶

Mr Raynsford spoke from considerable experience of changes in government machinery; while his personal brief changed little over his eight years in government, its location changed several times between Departments. Between 1997 and 2001 he worked in Environment, Transport and the Regions; for the next year, he was in Transport, Local Government and the Regions; and from 2002 he worked for the Office of the Deputy Prime Minister. His brief now sits within Communities and Local Government. These frequent reorganisations brought with them turnover of staff and changes of strategic priorities, which in his view damaged both institutional memory and understanding of policy.¹⁷

15 Skills for Government, Ev 34 [not printed]

16 Oral evidence taken before the Public Administration Select Committee on 14 December 2006, Q 211

17 Oral evidence taken before the Public Administration Select Committee on 14 December 2006, Q 211

14. Another former minister, Rt Hon Baroness Shephard of Northwold, made the point that departments have very different skill sets based on their existing functions. Only some departments were used to running services directly, as she found out when she presided over the merger of the Departments of Education and Employment in 1995. Officials in the Department of Employment had experience of running job centres, for example, whereas:

the Department for Education—and it was just undergoing a transition at my time—ran nothing, because, of course, education was run by LEAs and universities were run by themselves—so it was, in a sense, unrealistic to expect officials in the Department for Education to be able to run, basically, a bath!¹⁸

15. Lord Butler witnessed a large number of machinery of government changes over his 37 years in the Civil Service. With hindsight, his considered view was that it was often a cyclical process; functions were brought together until a department's responsibilities were too wide, and at that point separated again. He was not opposed to Prime Ministers being able to make changes, but he concluded:

I have come to think, and I probably thought this when I was in government, that the frictional cost of making changes very often does exceed the benefit.¹⁹

When we asked how long it took for a new department to settle down and be working at full effectiveness, the former Cabinet Secretary told us “it depends on the size of the change, but my general answer would be longer than you think”²⁰; and when asked about the costs of such changes, he told us “again, the answer is more than you think. They are very expensive.”²¹

16. The costs of machinery of government changes are not clearly identified. We do know, however, that these costs usually have to be met from within a department's existing settlements. Certainly the intention in the creation of the Ministry of Justice was that costs would be met from within pre-allotted budgets;²² Sir Gus O'Donnell was clear that the Treasury would rarely look kindly on a reserve bid for a structural change.²³ Nor are the costs purely financial. The delegation of pay and grading to different departments brings particular difficulties, as any transfer of functions leads to complex rearrangements of departmental pay policies; it can be years before staff previously from different departments are fully integrated onto the same pay and grading structures. In the meantime, there are bound to be winners and losers, and resentment has boiled over in the past into industrial action.

17. None of this is to say that the machinery of government should never be changed. As the nature of society changes, so too do the challenges faced by Government; whether the pressing need of the day is to combat mass unemployment or international terrorism, it is absolutely appropriate for the Prime Minister to reallocate his resources to focus on the job

18 Oral evidence taken before the Public Administration Select Committee on 14 December 2006, Q 178

19 Q 16

20 Q 19

21 Q 45

22 HC Deb, 29 March 2007, col 1650

23 Oral evidence taken before the Public Administration Select Committee on 6 February 2007, Q 55

in hand. Geoff Mulgan, the former Director of the Prime Minister's Strategy Unit, is of the view that the Departmental model itself might need to be reconsidered; he told us that departmental turf fighting could mean "more energy going into stopping other departments doing things than ... into pursuing the national interest".²⁴ We note the efforts in Finland to restructure government in such a way as to dispel narrow departmentalism; perhaps it is time for a similar radical restructuring of the British government. Dr Mulgan has suggested that we may be due a new Haldane inquiry; we put this suggestion to Lord Butler and Professor Hood, who both assented.²⁵ **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.**

18. Our primary short-term concern, however, is to encourage Government to appreciate the real costs of such changes, and to think long and hard about them. We asked the Minister for the Cabinet Office, Rt Hon Hilary Armstrong MP, if she believed machinery of government changes could have a negative impact on ministerial and civil service performance. Her reply was:

I think you just have to get used to change ... they are minor things. Goodness me, if you cannot cope with different bits of structure you should not be in the job, really.²⁶

Once again, no allowance is being made here for the different magnitude of changes Governments can make.

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.

3 A Constitutional Safeguard

20. Unfortunately, we cannot rely on Prime Ministers to give full consideration to every machinery of government change. As we noted above, some of the most significant changes can be made within a few hours of a new incumbent moving in to Number 10, having been conceived on the campaign trail, swiftly negotiated with would-be new ministers, and barely tested on those with experience of running the country. But even when a Prime Minister is no longer new to office, as Professor Colin Talbot put it:

Tony Blair can get out of bed tomorrow morning and think: I should amalgamate a couple of departments and it is done. There is no review process; there is no consideration of whether it has worked or not; there is no evaluation afterwards; and

24 Public Administration Select Committee, Second Report of Session 2006-07, *Governing the Future*, HC 123, Q 55

25 Q 76

26 Oral evidence taken before the Public Administration Select Committee on 6 March 2007, Q 104

there is certainly no consultation by Parliament to see whether or not this might be a good idea.²⁷

While this may slightly oversimplify matters, it is anomalous that it is so procedurally straightforward for the Prime Minister to reorganise the Civil Service (by amending the functions of the ministers it serves) when reorganising other public services may often involve statutory consultation, parliamentary approval or even primary legislation. Ministers are directly accountable to Parliament for the discharge of their functions, and so Parliament is not totally unable to question machinery of government changes; if Parliament was united enough in its opposition to a change, Government might well amend its plans. This is not, however, a substitute for a specific constitutional safeguard.

The Ministerial Code

21. Currently, the procedure for ministers wishing to suggest machinery of government changes to the Prime Minister are set out in the Ministerial Code. Ministers are required to consult the Head of the Home Civil Service before making submissions to the Prime Minister. There is no suggestion of consultation outside the Civil Service. Indeed, if it is not a departmental minister but the Prime Minister who is the proponent of a change, the Code is simply silent on the required procedure.

22. We asked Sir Gus O'Donnell in February whether there would be any effective scrutiny of the changes then being considered to the Home Office (now of course implemented). He was not greatly reassuring:

I will give advice to the Prime Minister. It is up to him then, I am afraid, how he proceeds with the machinery of government changes.²⁸

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.

Statutory Consultation

24. In other parts of the public service landscape, it is common for ministers and public bodies to be required in statute to consult on their actions. Where a body is established in statute, it is inevitable that any change to that body, however small, will require a process set out in statute. For example, any addition to the functions of the Public Guardian requires “due consideration” to be given to the recommendations of a specially constituted Board, including at least one Judge and at least four members who are “persons appearing to the Lord Chancellor to have appropriate knowledge or experience of the work of the

27 Oral evidence taken before the Public Administration Select Committee on 7 December 2006, Q 148

28 Oral evidence taken before the Public Administration Select Committee on 6 February 2007, Q 11

Public Guardian”.²⁹ Whatever the reasons for it, it is surely anomalous that there are compulsory checks on actions of this order, and yet not on breaking up the Home Office.

25. Targeted in the right way, consultation requirements can be a worthwhile check on unilateral action. It is clear that in the creation of the Ministry of Justice the Government has greatly angered the senior judiciary by failing to consult them about its plans until they were already settled upon; indeed, both the Lord Chief Justice and even the Lord Chancellor have confirmed that they learned about the Home Secretary’s suggestion in the *Sunday Telegraph*.³⁰ The Lord Chief Justice has indicated that he is close to invoking an emergency power allowing him to bypass ministers by making an unprecedented statement directly to parliament—a course of action clearly not open to every aggrieved stakeholder.³¹ It would surely be better for the Government and healthier for our democracy if agreement on principles could have been sought before the new Ministry opened for business.

26. Professor Talbot set out for us what he believed should happen if the next Prime Minister wanted to radically amend the machinery of government:

I would hope it would not be a case of Gordon Brown turning up in Parliament and saying, “Here’s one I prepared earlier”, but it would be the sort of thing which would be debated and discussed. We would have some preliminary attempt to see whether or not that would work and discussion around it, rather than it just being rolled out on the basis of a very small number of people in Whitehall having had discussions round that.³²

We certainly agree that proposals of real importance should be debated and discussed; but again, not every machinery of government change is constitutionally significant. At a time when talk of “consultation fatigue” is rife, we are wary of proposing more compulsory consultation periods. We are not convinced that Government consultation processes (especially when forced upon the Government by legislation) necessarily lead to worthwhile discussion. Government might benefit from consulting on its proposals, but only if it was genuinely interested in hearing what consultees had to say. We have been considering the merits and demerits of government consultations as part of our *Public Services: Putting People First* inquiry, on which we will report in due course.

27. We now know, on the specific example of the Ministry of Justice, that private discussions between the DCA and senior judges had begun by 7 February 2007³³; the changes were announced to Parliament on 29 March³⁴; and the new arrangements went live on 9 May. This is not a long period for consideration of a “serious constitutional

29 Mental Capacity Act, section 59(3)

30 Uncorrected transcript of oral evidence taken before the Constitutional Affairs Select Committee on 22 May 2007, Q 63-64, 120

31 As above, Q 58

32 Oral evidence taken before the Public Administration Select Committee on 7 December 2006, Q 176

33 Uncorrected transcript of oral evidence taken before the House of Lords Constitution Committee on 1 May 2007, Q 374

34 HC Deb, 29 March 2007, cols 133-135WS

problem”³⁵, as the Lord Chief Justice has called it. It was commendable that the Government at least produced an explanatory paper giving details of proposals to Parliament,³⁶ although the timeframe of the changes did not allow for consideration of whether the policy should be implemented, only how to mitigate some of its possible undesirable effects. Parliament and the Judiciary are clearly now engaged in the discussion, but the changes themselves appeared as a done deal.

28. The Government has already moved towards greater openness. The explanatory paper cited above may be a helpful precedent, in that it provided a public explanation of the proposals’ rationale. Indeed, it would have taken little to have turned it into a consultation document. We asked Lord Butler if the Government should publish a consultation document and invite comments before embarking on a major change. He thought it would be helpful, but not sufficient:

Yes, I think that would be good practice, but what would enforce it is if there was a greater parliamentary process than there is at the moment so that instead of there just being an order that Parliament can pray against there was something that required a debate, maybe hearings before a select committee and the Government to make its case and to take time to consider.³⁷

We agree with Lord Butler. **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 Ministers of the Crown Act 1975

29. Traditionally, the organisation of Government has been part of the Royal Prerogative. Like much of that Prerogative, the appointment of ministers and the reorganisation of ministries are functions which are now carried out by the Prime Minister of the day. Parliament has no *formal* checks on prerogative powers except those checks established through primary legislation. However, such checks could also be established by convention. This was demonstrated in the recent debate on Parliamentary approval for armed conflicts. The Leader of the House of Commons, Rt Hon Jack Straw MP, told the House that:

We [the Government] are of the view that the processes adopted in 2002 and 2003 [regarding the Iraq war] constitute a precedent, and that it is not conceivable that this House would ever depart from that precedent.³⁸

35 Uncorrected transcript of oral evidence taken before the Constitutional Affairs Select Committee on 22 May 2007, Q 86

36 Cabinet Office, *Machinery of Government: Security and Counter-Terrorism, and the Criminal Justice System*, May 2007

37 Q 43

38 HC Deb, 15 May 2007, cols 481-583

This is a momentous Government undertaking. In such a way are changes to our constitution made.

30. In the case of machinery of government changes, one legislative check does exist—the Ministers of the Crown Act 1975. That Act provides that machinery of government changes should be made by Order in Council:

Her Majesty may by Order in Council—

(a) provide for the transfer to any Minister of the Crown of any functions previously exercisable by another Minister of the Crown;

(b) provide for the dissolution of the government department in the charge of any Minister of the Crown and the transfer to or distribution among such other Minister or Ministers of the Crown as may be specified in the Order of any functions previously exercisable by the Minister in charge of that department;

(c) direct that functions of any Minister of the Crown shall be exercisable concurrently with another Minister of the Crown, or shall cease to be so exercisable.³⁹

The Act also provides that such Orders should be subject to parliamentary procedure. Orders which provide for the dissolution of a government department must be made by affirmative resolution, and so require the approval of both Houses. All other Orders transferring functions between ministers are subject to the negative procedure.

31. There have been 154 Transfer of Function Orders laid since the 1946-47 session, all but one of which have been subject to the negative procedure. As far as the Commons is concerned, only 11 have been debated, and none of those have been defeated or withdrawn. The last debate took place on the abolition of the Civil Service Department in January 1982—now over 25 years ago.⁴⁰

32. In the past it was more common for such Orders to be debated. Ten Orders were debated between 1951 and 1970, compared to just one since. It is clear that the risk of a debate would have been in the Government's mind when putting forward changes of ministerial responsibilities. In opening a 1969 debate on the transfer of the Monopolies Commission away from the Board of Trade, Sir Keith Joseph told the House that:

We have put down the Prayer to give the Government an opportunity to explain to the House the policy behind the proposed transfer of responsibility...⁴¹

33. There are very obvious reasons, however, why a Member might not pray against an Order. The first is the lack of effective consequences. Orders may not be laid until the changes are effectively a *fait accompli*. As we have seen, changes to the responsibilities of the Home Office and the Department for Constitutional Affairs were confirmed in a

39 Ministers of the Crown Act 1975, s1

40 Research commissioned from the House of Commons Journal Office

41 HC Deb, 3 December 1969, col 1635

Written Ministerial Statement on 29 March⁴², and the new Ministry of Justice came into existence on 9 May; yet still as of 12 June no Transfer of Functions Order has been laid. At some stage, Parliament is theoretically empowered to prevent this change from occurring; but the change will already have been made in practice.

34. A cursory look at transfers of functions shows that this timing is typical. All the departments we looked at were up and running at least two months before Parliament had its chance to block them:

Table 1: Illustrative sample of Transfer of Functions Orders

New office/department established	Date of establishment	Date of laying of Transfer of Function Order
Department for Communities and Local Government	5 May 2006	31 July 2006
Office of the Third Sector	5 May 2006	21 November 2006
Office of the Deputy Prime Minister	29 May 2002	4 November 2002
Department for the Environment, Food and Rural Affairs	8 June 2001	12 November 2001
Department for Education and Employment	5 July 1995	4 December 1995
Department of National Heritage	11 April 1992	12 June 1992

Source: research by House of Commons Journal Office

Although the sample size is small, we do not believe this is atypical.

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.

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.

37. Even if Members might think carefully before demanding that a reorganisation be undone, there could be circumstances where it was appropriate for them to do so. The prospect that changes might be debated could dissuade Government from ill-considered changes. However, the second difficulty with the current procedure is that as the great majority of Transfer of Function Orders are subject to the negative procedure, debate is not guaranteed even if Members do pray against them. Procedural changes in the Commons over the years have meant that debates on any negative instruments have become the exception rather than the rule. Even if an Order has been prayed against, debate only takes place if the Government gives an opportunity for it, either in Committee or on the Floor of

the House. It is at the Government's discretion if and where prayers are debated.⁴³ If the debate is in Committee, there may then be no opportunity for a division on an effective motion.

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.

The Solution: A Stronger Parliamentary Safeguard

39. Even if the Government undertook to find time to debate all prayers against Transfer of Function Orders, an affirmative procedure might be more appropriate. It would ensure that Ministers would have to explain what was proposed and why. We have heard the argument for such a procedure from several quarters. Lord Butler, for example, told us:

There is a requirement for a Transfer of Functions Order, as you know, which Parliament can pray against but usually does not, but there is not a requirement for any great parliamentary procedure or parliamentary scrutiny when these changes come about. I have come to think it would be a good discipline on governments if there was such a procedure.⁴⁴

He talked in particular of the abolition of the Lord Chancellor's Department and the creation of the Department for Constitutional Affairs in 2003, which had needed to be subject to legislation because the Lord Chancellor was named specifically in so many statutes. He thought the need for a Parliamentary procedure had changed the Government's intentions, and for the better.⁴⁵ Since the Constitutional Reform Act 2005, there is now a separate legislative power for transferring functions to or from the Lord Chancellor.

40. Professor Hood noted that Professor Pollitt had come to much the same view that Lord Butler had put forward—notably that requiring a debate “would nudge the government machine bit by bit towards a more systematic collection of information and evaluation of information about the changes proposed or, indeed, conducted.”⁴⁶ He also commented that he would personally have a lot of sympathy with such a view.

41. We do not expect that there would be much appetite in the House to debate every change in the machinery of government. But we have seen that there are various magnitudes of change. In the particular case of the recent Home Office split, there is clearly appetite for parliamentary scrutiny.⁴⁷ Lord Justice Thomas called it “not [simply] a machinery of government change but a change which had serious constitutional

43 An exception to this occurred on 7 February 2007 when a motion to annul a statutory instrument which had been debated in Committee was taken on the floor of the House at the instigation of the Liberal Democrat Party as part of an Opposition Day.

44 Q 4 [Lord Butler]

45 as above

46 Q 4 [Professor Hood]

47 See for example Early Day Motion 1396, 1 May 2007

implications”.⁴⁸ We agree with this, and with his analysis that it required “a proper, open examination so that we could have something that Parliament was content with, the judiciary was content with and the executive was content with.”⁴⁹

42. There is a great deal of expertise within Parliament on the subject of Government. Both Houses contain not only many ministers and former ministers, but representatives with a great variety of experiences of working with Government. A parliamentary process also allows any individuals or organisations affected by Government proposals to put their case to their elected representatives. Parliament should have a say. We note that if the Government wished to alter the balance of the composition of the Judicial Appointments Commission, for example, it would require the approval of both Houses.⁵⁰ We see no reason why the same approval should not be required for significant machinery of government changes.

43. In order to have an effective input, Parliament needs not just a voice but information. The Government needs to provide a business case for the changes it is proposing. That business case could build on the precedent set by the Cabinet Office in the publication of a paper setting out the reasoning behind the decision to institute a Ministry of Justice; but it ought also to be more fully costed. Proper scrutiny relies on cost information being available.

44. There are other means of involving Parliament beyond the ones we have discussed. Government could, for example, find time for debates on machinery of government changes. Or we could go further still. Rt Hon William Hague MP, for example, told our predecessor Committee in 2003 that he believed a Bill should have to be passed to reorganise the machinery of government, noting that:

To my constituents in rural North Yorkshire, the creation of DEFRA in 2001 was as important an event in the way they are served by the government of the day as the passage of most legislation.

It is a major disincentive to reorganise things, of course, creating such a rule, but that, I believe, would be no bad thing, since most such reorganisations are hugely expensive and a substitute for policy-making rather than an aid to it.⁵¹

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.

48 Uncorrected transcript of oral evidence taken before the House of Lords Constitution Committee on 1 May 2007, Q376

49 as above

50 Constitutional Reform Act 2005, Schedule 12, para 5

51 Public Administration Select Committee, Fourth Report of Session 2003-04, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, HC 422, Q 2

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.

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.

Conclusions and recommendations

1. 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. (Paragraph 11)
2. 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. (Paragraph 17)
3. 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. (Paragraph 19)
4. 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. (Paragraph 23)
5. 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. (Paragraph 28)
6. 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. (Paragraph 35)
7. 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. (Paragraph 36)
8. 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. (Paragraph 38)

9. 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. (Paragraph 45)
10. 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. (Paragraph 46)
11. 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. (Paragraph 47)

Formal Minutes

Tuesday 12 June 2007

Members present:

Dr Tony Wright, in the Chair

Paul Flynn

Julie Morgan

David Heyes

Mr Gordon Prentice

Mr Ian Liddell-Grainger

Draft Report [*Machinery of Government Changes*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs entitled Summary read and postponed.

Paragraphs 1 to 47 read and agreed to.

Postponed paragraphs entitled Summary read again and agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order 134.

[Adjourned till Tuesday 19 June at 3.45 p.m.]

Witnesses

Thursday 19 April 2007

Rt Hon Lord Butler of Brockwell, KG, GCB, CVO, a Member of the House of Lords, and **Professor Hood**, Gladstone Professor of Government, Oxford University

Ev 1

Reports from the Public Administration Select Committee since 2005

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
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
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523
Sixth Report	The Business Appointment Rules	HC 651

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
Sixth Report	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
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
Second Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report (Session 2004-05)	HC 853
Third Special Report	Inquiry into the Scrutiny of Political Honours	HC 1020

Oral evidence

Taken before the Public Administration Select Committee

on Thursday 19 April 2007

Members present

Dr Tony Wright, in the Chair

Mr Ian Liddell-Grainger
Kelvin Hopkins
Julie Morgan

Mr Gordon Prentice
Mr Charles Walker
Jenny Willott

Witnesses: **Rt Hon Lord Butler of Brockwell, KG, GCB, CVO**, a Member of the House of Lords, and **Professor Hood**, Oxford University, gave evidence.

Q1 Chairman: Can I welcome our witnesses this morning, Lord Butler, former Cabinet Secretary and much else, who often helps the Committee in its work, and Professor Christopher Hood, a distinguished professor of these matters, currently at Oxford, who, again, has helped the Committee in the past and I am sure will help us in the future. We particularly asked you because we wanted to talk about two things. First of all, the background to machinery of government changes—I suppose particularly prompted by the fact that we have got a major re-organisation of a bit of government going on at the moment; an issue which has surfaced with the Committee intermittently is whether these things should be done in a more deliberative way than seems to be the case and we would like to explore that with you for a little while. I am not talking specifically about the particular re-organisation but about the business of re-organising government. Then, secondly, the more broad area, which is some of the issues and arguments that are around how we conduct government currently and whether there are developments taking place which ought to be corrected or to be built on, and to get some handle on that. We hope to do all that in the next hour or so. I do not know if either of you would like to say anything by way of introduction?

Lord Butler of Brockwell: I am very happy for you to use the time as you want to.

Q2 Chairman: Let me ask you that question which I mentioned first. Are we too casual about the way in which we re-organise, in a major way, bits of government machinery? I am struck by the fact that when we re-organise all kinds of public bodies we have to go through rather elaborate consultative mechanisms, documents being produced, a defined consultation period, responses to consultations and so on, and yet we seem to be able to re-organise the centre at will over a weekend. Lord Butler, you have been involved in many of these moments, do you think it is all too casual?

Lord Butler of Brockwell: It is another area where since I left government I have come to think, yes, we do it too casually. Of course, a lot of the occasions when this happens are on the formation of a new government, particularly after a General Election.

The machinery of government is rightly, I think, thought to be the prerogative of the Prime Minister. Prime ministers should have discretion to organise government as they want. Like so much that happens at the beginning of an administration, it all has to be done in great haste. When preparing for elections I remember the permanent secretaries of departments had discussions with the opposition spokesmen under the convention which exists and the Cabinet secretary had discussions with the Leader of the Opposition, the leader of the Liberal Democrat Party, and with the Leader of the Opposition's office. One of the things which that covered, of course, was the machinery of government because when a new Prime Minister has to make appointments, obviously the first thing you have got to decide is what posts you are going to appoint, therefore what the structure of the departments ought to be. Those discussions in advance of the formation of a government can get you a certain amount of the way, but I do not think I, or probably any of my predecessors or successors, would pretend that in the lead-up, particularly during a General Election, the Leader of the Opposition has got his mind primarily on that, the concentration is on winning the election, so a lot of this has to be done very, very quickly. I am not sure that is a satisfactory arrangement. Of course the Civil Service tries to think very carefully, as it does on other government policies; we look at the party manifestos and we try to deduce from them what the intentions of an incoming government would be; we have these discussions and that tells us a certain amount and then we work on that. We try to have proposals ready for an incoming government which are as thought out and developed as they can be. In that flurry of when governments are formed, when the people who are taking part in it at the political level are probably completely exhausted by the campaign, I am not sure that one could really say this is always as rigorous a process as it ought to be.

Q3 Chairman: You are talking about when governments change, but during the passage of a government, as now, when huge change is made at the centre—we have had previous examples too—what do you think about that?

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Lord Butler of Brockwell: That is slightly easier because you have not got a General Election campaign going on. Let us take the present situation. Suppose Mr Blair's successor wants to make changes to the machinery of government, well there is time to be thinking about that and maybe having discussions within the Government about it and there is not the distraction of a General Election campaign getting in the way of it. The same thing applies that, no doubt, when Mr Blair's successor comes into office a whole lot of decisions will have to be taken very, very quickly.

Q4 Chairman: Just so I am clear, if you are saying, and I think you are saying, you now change your view on this, you think it is now done more casually than it ought to be done, then what is the model, whether General Election time or during a government, for it to be less casual? What would be the way of doing it that would meet some of these problems?

Lord Butler of Brockwell: I think this is another aspect of the Royal Prerogative. The changes are made under the Royal Prerogative. There is a requirement for a Transfer of Functions Order, as you know, which Parliament can pray against but usually does not, but there is not a requirement for any great parliamentary procedure or parliamentary scrutiny when these changes come about. I have come to think it would be a good discipline on governments if there was such a procedure. I think particularly of the recent incident of the abolition of the Lord Chancellor's Department, the creation of the Department for Constitutional Affairs, which had to be subject to a parliamentary procedure, had to be subject to legislation, which changed the Government's intentions, I think changed them for the better.

Professor Hood: I would say that in my academic field there would be two main views on the issue you have just put. One I would associate with Chester and Wilson who, 40-odd years ago, produced a study of 50 years of changes in machinery of government from 1914 up to 1964 and they looked at that era in great detail. They came to the conclusion, standing back from all that detail, that what they had witnessed was a process in which government had to continually adapt to political circumstances, internal and external. They thought that the job of doing that had to be governmental, they could not see a way other than that process being led by government and coming from the centre of government, partly because they thought that the key information needed to decide when departments needed to change was information that mainly would be held by the Prime Minister or the Cabinet Secretary, mainly about the political load that the top civil servants or ministers were under. They thought that could be usefully supplemented from time to time by Parliament in committee work, such as your own, and other kinds of inquiries, but they thought mainly this process of adaptation had to be a governmental function and broadly come from the top of government as well. The other view in my field I would associate with Christopher Pollitt, now at

the University of Leuven, who did a very careful study 20-odd years ago now of 20 years of machinery of government changes from the early 1960s up to the middle 1980s, another momentous period. Christopher Pollitt came to the view which I think Lord Butler has just expressed, namely that there would be an advantage in widening the process of consultation which took place around machinery of government changes, partly because he thought that such a widening of the consultation process would nudge the government machine bit by bit towards a more systematic collection of information and evaluation of information about the changes proposed or, indeed, conducted. I think those are the two main views in my field. I would personally have a lot of sympathy with Christopher Pollitt's view.

Q5 Chairman: That is really useful. Thank you for giving us the academic context for all this so that we do not just make it up as we go along, which we are inclined to do. Can I take it into a different area and then I will ask colleagues to come back to this area, I am sure, and others. Lord Butler, you have been associated with this Conservative task force which has produced this document called "*An End to Sofa Government*". Could I ask you first of all, what made you think it was appropriate for a former Cabinet Secretary to attach himself to a political party enterprise of this kind?

Lord Butler of Brockwell: I was asked a similar question when I appeared before the Committee before, and the view I take is that I will help any party that wants to ask for my advice. If the Labour Party wants to ask for my advice or the Liberal Democrat Party, I would do exactly the same thing. You will see at the beginning of the piece there is a sentence which says, "... Lord Butler of Brockwell and Sir Christopher Foster are members of the task force and have given expert advice on a non-party basis. They support its recommendations but are not signatories to party political statements expressed in this report". You may think that was not sufficient detachment but, as I say, my feeling about it is anybody who wants to ask for my help is welcome to have it.

Q6 Chairman: Yes, you will help anybody but, as you just said—and this is only a way of getting into the issue—you say that you support their recommendations, do you support their analysis?

Lord Butler of Brockwell: I think it depends what you mean by the analysis. The qualification at the beginning is to insulate, if that is possible, Christopher Foster and me from some of the more tendentious party political comments which are made in the document. This is a Conservative thing and they obviously will wish to be critical of the present Government in a party political way. We did not want to inhibit their doing that sort of thing.

Q7 Chairman: Of course, we understand the party political references and that is the saving clause from your point of view, but when I asked about the analysis, it is the analysis which produces the recommendations; you have to analyse a problem

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and then you come to the answer. The analysis is pretty sweeping and it is not one that I recognise from what you have said to us before. When I read this it says: "... the combination of an over-powerful premiership and the dominance of news management within policy-making have been very damaging to both effective and accountable government". Then it goes on to say, "Cabinet government has been all but destroyed. Most ministers have become little more than—"

Lord Butler of Brockwell: I think you will agree with that.

Q8 Chairman: "—the presentational vehicles for the policies of political appointees in Number Ten" and so on and so on. That is the analysis. As I say, this is unlike the kind of thing you have said to us in the past. Have you had a conversion experience?

Lord Butler of Brockwell: No. What I would say is I think there is a certain amount of political hyperbole in that, but there are comments I have made, and, indeed, made in the report of the Intelligence Review Committee, which, incidentally, contained representatives of all the parties, which contain statements that are similar to that, though, of course, we have put them in slightly more of what was described as mandarin prose. Nonetheless, I do not dissent from saying that there is an element of truth in all areas of that analysis which you have read out. Moreover, I would go on to say that I do not think you can say there was an occasion before the Committee when I have said something contrary to that.

Q9 Chairman: Well, funny you should say that!

Lord Butler of Brockwell: Leading with the chin, I can see!

Q10 Chairman: I have heard you. Parts of the recommendations are about what we should do about the Ministerial Code. Not only have you spoken here but you have written about this. In the past you wrote a preface to this book on the Ministerial Code and you are quite emphatic. You say that you dissent from the view that here is a rule book for government, you say it is lore, a compendium of good practice, not a set of rules, and you go on to talk about it having that kind of status, something internal to governments, owned by Prime Ministers. Now I find in this report: "The responsibility for monitoring the Code should be taken out of the hands of the Prime Minister and placed in the hands of a body with powers comparable to those of the National Audit Office reporting to a parliamentary committee". Again, I have to ask you, when did you have this conversion experience?

Lord Butler of Brockwell: I do not think it is such a great conversion. The enforcement machinery which is recommended here is a parliamentary select committee which is pursuing a parliamentary resolution, now that is not the law. We have, for example, a Civil Service Code. I support the idea that there should be a Civil Service Code and in a Civil Service Act that Code should be covered by a

statutory instrument, so I support all that. I do not support the idea that these things can be entirely governed by legislation, but I do think that codes which are then scrutinised by Parliament and followed up by Parliament are a very effective way, perhaps the most effective way, of inducing good practice in the Executive.

Q11 Chairman: This was a set of practices issued by a Prime Minister about how members of his government should conduct themselves and he was to enforce it and police it, that was the model and it was the model to which you subscribed. You are now telling us that, in fact, there should be external intervention in this to make sure it is being observed. This is a big change and I am just wondering about the process which has led you to this conclusion.

Lord Butler of Brockwell: I do not think it is a very big change. The sanctions would still be in the hands of the Prime Minister, it would not be open to a parliamentary select committee to sack ministers. The implementation would be in the hands of the Prime Minister, but it would be open to a parliamentary committee to judge the government's actions against a set of standards which Parliament has approved and the government has assented to and comment on them in the light of that. As I say, the parliamentary committee could not dismiss ministers for that, but I think that would be a powerful point of pressure, both on the minister and the Prime Minister in seeing that the administration behave properly.

Q12 Chairman: But the body to do the monitoring, as recommended here, is a body analogous with the National Audit Office. That in turn will report to a parliamentary committee, but we are creating a substantial external body that will monitor the operation of what you believe was essentially an internal government document.

Lord Butler of Brockwell: Correct.

Q13 Chairman: That is a big change and I am just wondering what has led you to think you want to make it.

Lord Butler of Brockwell: In commenting on all this I ought to say that I do not think Mr Clarke would be entirely happy for me to be the sole witness, this is a Conservative document and it really ought to have a representative of the Conservative Party to defend it, but you are asking me what my attitude is and I am perfectly happy to talk about that.

Q14 Chairman: It says that you subscribe to the recommendations.

Lord Butler of Brockwell: I do, exactly, and I am perfectly happy to talk about that, as long as this is not taken as me being the spokesman for this document. Let me say why I support that and why I do not think it is a change of mind. I never said there should not be a body which effectively supports a select committee in pressing government to apply these standards, I think that would be a great help to a committee such as yours. My experience is of the Committee of Public Accounts and the National

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Audit Office serving it. I know that that machinery has a very salutary effect on permanent secretaries and, indeed, on the government as a whole and I think that could be extended to more general practices of government. That is why I support it.

Chairman: I am delighted, ex-Cabinet secretaries become more interesting than Cabinet secretaries and that is in the order of things and it is good that it is so, which means we can have a different kind of conversation now than the one that we perhaps used to have when you were defending positions which it now seems you were not entirely attached to.

Q15 Jenny Willott: I want to go back to the changes in the machinery of government. Lord Butler, when there were changes afoot when you were in government, were you involved in any way? Were you consulted? If you disagreed with the direction which the government was taking, did you have any influence in changing their perspective on how things should be changed?

Lord Butler of Brockwell: Yes, I was closely involved. In the Cabinet Office there was a machinery of government division whose job it was to look at issues like this, both the technical legislative aspects of making changes, the procedure which was needed, but which also would advise governments on the merits of possible changes. In advising on the merits, of course, it was not only the Cabinet secretary who did that, there were colleagues out there in the departments concerned at the front line who had much more expertise and views, and I tried to make sure they were always fed in to the Prime Minister. However, because it is the Prime Minister who takes the lead on machinery of government changes, that was the funnel through which the advice came in, it came in via the Cabinet Secretary.

Q16 Jenny Willott: Were there any big mistakes made in your time as Cabinet Secretary which were either because there had not been enough consultation, because advice had been ignored or just because people were too inexperienced coming into government and did not have the background knowledge?

Lord Butler of Brockwell: I am sure there were. I do not think there were any technical mistakes made, we got the procedure right and when governments wanted to do it, we helped them to do it. I cannot remember a time when we tripped over that. I think with a lot of the machinery of government changes there would be great scope for argument about whether they were on balance right. I do not want, and my memory is not good enough, to pick out a particular one—

Jenny Willott: That is a shame!

Lord Butler of Brockwell:—but some were done and then they were undone. There was a great deal of change, some of which was subsequently recognised not to have worked properly and was revised. One of the examples I think of was the creation of the super ministries in the 1970s, long before I had any influence on it, which were made for reasons that seemed very good at the time but really did not work

because the burden on the secretary of state in charge of these super ministries was found to be too great, so the thing fragmented again. I think there is a long history of machinery of government changes of people trying to say, “Let’s get more co-ordination. Let’s try and bring things together into bigger departments”, and then finding that it is too wide and then shifting them again. Again, I have come to think, and I probably thought this when I was in government, that the frictional cost of making changes very often does exceed the benefit. That is one of the reasons why I think it would be good if the Executive was forced to act a bit more slowly, to have a parliamentary procedure and get wider views coming in before changes were made.

Q17 Jenny Willott: Professor Hood, do you have a perspective on that?

Professor Hood: I would like to step back for a moment and think about what are the reasons why machinery of government changes take place. Again, if I go back to the academic perspectives on this, we tend to distinguish a number of reasons why such changes take place and Christopher Pollitt’s study, which I referred to, looked quite carefully at these. Of course, some are undertaken for reasons of administrative efficiency, better effectiveness, et cetera. Christopher Pollitt found that just under half of the changes he looked at in 25 years could be fitted in that area. According to Pollitt, the most common reason was the giving of greater weight to a particular policy or altering the weight in policy over time; that was more than 50% of cases. Just under a third of cases dealt with the personal chemistry type of issues which are involved, that is to say balancing the Cabinet, dealing with the matching responsibilities to personalities and their capabilities, et cetera. A few, but only a very few, in that study came about as a result of government taking on completely new functions, only something like 7% in Pollitt’s study. I think Pollitt thought about 20% or so were changes which were created to give an impression of dynamism and modernisation, et cetera; remember, his study was 1960 to 1984 or so. Those are the kinds of reasons why, according to the academic studies, machinery of government changes take place. I think you would probably need a different kind of evaluation for each of those objectives. For example, if what you want to do is give an impression of dynamism and modernisation, et cetera, then the appropriate test is, “Was that impression successfully generated?” The issue of balancing the personalities and the tasks is also something which would be quite difficult to assess in terms of information on the record. The easiest bit to assess would be the technical administrative efficiency type of cases, but that is less than half of the total changes in that study.

Q18 Jenny Willott: Do any of them last longer than others? Does a particular type of change have a greater lifetime?

Professor Hood: I do not think we have good information on which I could answer that. It is certainly true that departments have very different

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lifestyles. Would it be possible for me to add to what Lord Butler said because we do know quite a bit about the process by which the decisions to create super ministries in the 1970s were created and that too came from an incoming government. Most of the work seems to have been done prior to the government coming into office by a variety of sources, including quite extensive use of consultants in the 1960s, by Edward Heath; a business group, which was also apparently quite influential; and numerous former civil servants who were influential at that point. From what we know about that, much of the work apparently in that case had been done before the Heath Government came into office, in the period in opposition.

Q19 Jenny Willott: Lord Butler would probably know this, can I ask how long it takes for a new department to settle down and be working at full effectiveness?

Lord Butler of Brockwell: Again, it depends on the size of the change, but my general answer would be “longer than you think”.

Q20 Jenny Willott: Does the success of a new ministry depend on the amount of planning, on the personalities involved, on the political imperatives, on chance? What are the factors which influence whether it is a successful change?

Lord Butler of Brockwell: My answer to that has got to be all those things. I think chance least, but successful planning and whether it is well designed to meet what is a new requirement. We all recognise, I know the Committee recognises, that things change and the machinery of government has got to be ready to adapt to those changes. That has always got to be a slightly tentative process, but the more thought that is being given to it and the more the change is fitted to the circumstances it is designed to meet, the more successful it is likely to be.

Q21 Jenny Willott: How important are the personalities involved in that success as well?

Lord Butler of Brockwell: I was almost inclined to intervene when Christopher was speaking and to say that I think personality is usually the worst reason. There is a real risk, particularly at the time of the formation of a new government, that changes will be made for the reason that Christopher gave because of personalities in order to balance the political powers within the government or to give an important political figure a bigger job. Speaking as a civil servant, I do not think those are very good reasons, but there is a danger they will be given too much weight at the time that a government is formed.

Q22 Jenny Willott: For example, the ODPM¹, perhaps?

Lord Butler of Brockwell: I do not think I want to comment on that particular example.

Jenny Willott: Of course not.

Chairman: We cannot think of any examples, can we!

Q23 Jenny Willott: Professor Hood, do you have anything to add on that?

Professor Hood: It can be quite difficult to separate these factors. If we go safely back to the 1960s, where I think all the figures involved are dead, the Wilson Government which came in in 1964 divided the Treasury into half, on the one hand creating a finance ministry and on the other hand an economics ministry, which was called the Department of Economic Affairs. This partly reflected a notion that the country would be better managed economically if there was a more dynamic economic planning ministry which was separated from the finance ministry functions of the Treasury.

Lord Butler of Brockwell: What was called “creative tension”, in fact!

Professor Hood: Indeed, but it was also the case that Harold Wilson, the Prime Minister, had only a year or so before narrowly defeated by two heavyweight contenders for the leadership, James Callaghan and George Brown, and each of these two halves of the former Treasury was given to those two former contenders. That was a particularly problematic machinery of government change, perhaps it was designed to be, thus you see what I am hinting at, but one of the reasons why it proved to be problematic was because it was, as it were, a ragged tear. It is often said that the smoothest way to make machinery of government changes is to take units as going concerns and move them from one bit of the structure to another, but if you are cutting through internal units within departments, which that change did involve, then you create a need for much deeper processes of adaptation to take place. I am giving you that example as a case where it is quite hard to disentangle what were overtly given as the goals for making the changes from the particular political circumstances which the Prime Minister then faced in relation to two key heavyweight colleagues. I think even now historians would probably debate what the relative weight of those things was.

Q24 Mr Walker: Lord Butler and Professor Hood, I hope you will be able to answer these questions or want to answer them. Lord Butler, you have been around a lot of governments over your glittering 40 years in the Civil Service, and I am quite interested in the criteria for ministerial appointments as a new Member of Parliament, not that I have any ambition because my career is probably behind me! When it comes to appointing junior ministers, what seems to be the criteria? In your view and as an observer, is ability or malleability favoured when it comes to finding junior ministers to fill posts?

Lord Butler of Brockwell: I believe ability is the major criterion. As far as junior ministers were concerned, it used to be very much on the advice of the Chief Whip, and it used to be thought—I did not take much part in this, I hasten to say—

¹ Office of the Deputy Prime Minister (ODPM).

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Mr Walker: No, but you observed it.

Lord Butler of Brockwell:—to depend a lot on parliamentary performance, people who had impressed in the House. I am told, or I read somewhere, that this happens less now. If so, I think that is something of a pity. Political balance will also be a consideration and also, importantly, the views of the ministerial head of department, people whom that ministerial head of department thinks well of and has got confidence in.

Q25 Mr Walker: Okay, so there is a sort of tension between competency and compliancy perhaps now more than there was when you were in the post?

Lord Butler of Brockwell: I cannot helpfully speak of now.

Q26 Mr Walker: Do you think there are too many ministers?

Lord Butler of Brockwell: Yes, I think there are too many ministers for the use they are put to. Junior ministers could be used a great deal more effectively than they are, at least I think that I think that. What I would say is my view of government, which after all was 10 years ago, and my view of departments, was that when there was pressure for a reduction in the number of civil servants, the place where I hankered to make savings was by reducing the number of junior ministers and the rather large support that each of them required, because I did not think those ministers were in all cases being effectively used for the government.

Q27 Mr Walker: That is quite an interesting point. You say they were not being effectively used and there were too many, what would have been your preferred scenario? You would have reduced the number of ministers and what would you have had the remaining ministers doing?

Lord Butler of Brockwell: I would have had them playing a larger part in Cabinet committees, for example. One often found that if an issue was important to the department, the secretary of state felt that he or she had to handle it themselves and would not leave it to a junior minister. I felt the machinery of government could be more effective if, first of all, the secretaries of state had not been so hard pressed and, secondly, the abilities of the junior ministers had been more effectively used.

Q28 Mr Walker: Perhaps a little more delegation to talented people?

Lord Butler of Brockwell: Exactly.

Q29 Mr Walker: Professor Hood, would you like to say anything on that as an observer?

Professor Hood: I certainly do not have Lord Butler's experience. The only thing I would point out is that the famous Haldane Committee on the machinery of government of 1918, nearly 100 years ago, thought then that the Cabinet should be about 10 people and no more than 12 at the outside. If we look back to their deliberations all those years ago, they wanted a smaller more strategic Cabinet and

their ideas about how the machinery of government would be organised, as it were, funnelled out from there.

Q30 Mr Walker: Finally, an observation with a question at the end. It does seem to me—I am not a student of politics in the same way that you both are—that over the last 30 years the government of the day has tried to expand the size of the payroll vote as a means of control. For example, in the 1950s and 1960s it was perfectly acceptable, and it happened on a number of occasions, for parliamentary private secretaries to vote against the government on certain issues of conscience and not lose that position, whereas now we see parliamentary private secretaries being referred to in the press as members of the government and having to resign when there is a disagreement, as four did over the Trident vote. I was wondering if you could comment on my observation and perhaps comment on some of the concerns hidden within it.

Lord Butler of Brockwell: I think there is a general pattern over many years—and Professor Hood will be able to say more—of the executive using every means at its disposal to maintain discipline among its followers to support them in Parliament, and you see that extending all the time. I just think it is an inherent tendency of the executive.

Professor Hood: I do not think I can add to that.

Mr Walker: I would just conclude by saying I think it is very damaging to the public perception of what their Members of Parliament and politicians are doing, but again that is an observation, you do not need to respond to that.

Chairman: We shall soon have PPSs having PPSs.

Mr Liddell-Grainger: Hear! Hear!

Chairman: And you will be in there!

Q31 Kelvin Hopkins: I read the Conservative paper with interest, but with a bit of editing could it not have been written for a Labour Party in opposition during Mrs Thatcher's time and could it not equally well have applied then? Perhaps things have become more extreme since then but at the same time with a bit of editing could it not have been written at that time and equally well apply to a Conservative Government?

Lord Butler of Brockwell: You have given me an opportunity to make a point that I wished I had made earlier, which is that, as I see it, the analysis and many of the criticisms here are not, to my mind, analyses and criticisms that apply exclusively to the present Government. I think the tendencies which are analysed there have been present over a long period and over several administrations, so, yes, I think you are right; a lot of what is said here could have been said about earlier administrations. Though, because you refer particularly to Lady Thatcher, I would say that Lady Thatcher was rather formal about the role of Cabinet. She certainly tried to make Cabinet agree to the things that she wanted them to agree to, but she did think that Cabinet agreement was a necessary step, and in some ways I think that since then—and I am not again speaking entirely of the present

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administration—the feeling that important decisions ought to be endorsed by Cabinet has diminished.

Q32 Kelvin Hopkins: I am not quite sure if it was you, Lord Butler, or one of your colleagues who said that during previous governments—Wilson, Callaghan, even Thatcher—the Cabinet typically used to receive some 200 papers a year from departments, permanent secretaries and ministers which would then be debated at Cabinet at length and decisions would emerge on the basis of those papers, guided no doubt by the Prime Minister. Now, more recently, one has apparently seen one year when only two papers were considered by Cabinet in a year and Cabinet meetings have been very short with a simple presentation by the Prime Minister about what the line was. If that is true, when did that change take place? Was it under Mrs Thatcher or was it later?

Lord Butler of Brockwell: It is a pretty well steady straight line diminution since the Churchill administration—actually it started with the Attlee administration after the Second World War. It goes down almost in a straight line. As I remember—and I have given a lecture on this—I think there were some 340 papers per year taken on average in the Attlee administration 1945 to 1951 and that diminished pretty well in a straight line to the situation that we now are in.

Q33 Kelvin Hopkins: All this analysis—and we talk about constitutions quite a lot in this Committee—often ignores the realities of power. One can in fact set up all sorts of constitutional changes without recognising that it is power and where power is located that really is important. I remember as a student we were given a lecture on the Soviet constitution, which was set up in the 1930s. It was very elaborate and very impressive and contained all sorts of detail, but it meant absolutely nothing because power resided with Stalin, the central committee and the Politburo, that is all that mattered. To an extent one has to try to recognise that power is important and a constitution is not a decoration that Bagehot would have recognised?

Lord Butler of Brockwell: I agree entirely. I would make two points about that. The recommendations to do things differently, as I see it, are not for some sort of constitutional reason; they are simply because this is the way—and I think this is so if you look at history—better decisions come to be taken, and that is in the national interest and I argue it is also in the interest of the administration at the time because they are likely to do better and last longer. That is one observation; the second is that power corrupts, that is why I think Parliament is so important, and it is necessary to put constraints on power in order to make sure that power is exercised better. That is what lies behind what we were referring to earlier of a suggestion of a parliamentary resolution which Parliament would be given some leverage to ensure is enforced.

Q34 Kelvin Hopkins: Just shortly before he died Robin Cook made a speech to the Hansard Society, which I attended, and he identified a major part of the problem as changes within parties and particularly within the Labour Party. I do not know if either of you would like to answer this. He said that since the leader of my party, the Labour Party, is now elected by the mass membership, this has diminished the role of Members of Parliament in constraining our leaders or having an influence over our leaders. A leader therefore does not have to please different sections of the Party. He could choose Ministers in his own image or people who would be guaranteed to accept his will because he was not, in a sense, accountable to MPs any more. This had been a fundamental change in British politics, exploited to an extreme by the present Prime Minister. Robin used the example of previous Labour Cabinets when for example you would have a range of view from Roy Jenkins and Shirley Williams on one side across to Tony Benn and Barbara Castle on the other. There was a range of views, and given that we only had in those days two major parties, it was right that there was a range of views represented in Cabinet and that policies emerged from the rubbing against each other of different sections of the party with different views. Is that not of fundamental importance?

Lord Butler of Brockwell: I think it is. I think that history shows that those exercising power will always fight to diminish the constraints on them in exercising that power and will try to become more dominant, and that is why Parliament and the powers of Parliament and indeed, as you say in your case a party, are so important.

Kelvin Hopkins: My final question really touches on that.

Q35 Chairman: Can I bring Professor Hood in on that for now.

Professor Hood: I just wanted to say that the Soviet constitution to which you referred included a right of secession for the various states. That of course was a dead letter in 1936 when the constitution was introduced, but fast forward 50 years to the late 1980s and it becomes absolutely the essence in politics then. The point I wanted to introduce is that it is not just a matter of choice within a party but also of choice among parties. In Germany, for example, these issues about the structure of the government in terms of ministers, et cetera, very largely take place through bargaining within the coalition because you are dealing with a coalition government rather than a single party government, and even within Britain we have seen significant instances of machinery of government changes that have arisen as a result of negotiations within coalitions. I believe it is true to say that in 1916 when the War Coalition was created for the First World War, the Labour Party's key price for entering that coalition was that the industrial conciliation and arbitration functions then in the Board of Trade were to be taken out of the Board of Trade and put into a separate Ministry of Labour, which of course would be a ministry that the Labour unions would be able to have significant

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influence over. I just wanted to draw the Committee's attention to the fact that when you get coalition governments then the whole process of bargaining over what the structure of government will be and what the nature of ministries will be is rather different too.

Chairman: Thank you very much for that.

Q36 Kelvin Hopkins: We may be entering a period like that in the not-too-distant future and I do not suppose either of the two major parties looks forward to that. However, governments in opposition typically say all sorts of worthy things like this. When they get into office of course, as you have said, they then say, "Oh well, it was a good idea in opposition but now we have power we do not need to deal with that. What we really need is to get on and do what we want to do." Can one imagine a situation where perhaps the Conservatives win the next election and then this becomes another little interesting academic paper which is not acted upon?

Lord Butler of Brockwell: One can imagine that all too readily, but my argument is that actually this is in the interests of the administration themselves as well as the national interest. They are likely to reach better decisions, therefore have less hassle and then survive longer.

Kelvin Hopkins: Thank you.

Q37 Julie Morgan: Thank you. Just following up, Lord Butler, you said earlier that power corrupts and I think that is something that is generally agreed. From your position how would you say that you would see the first signs of power corrupting?

Lord Butler of Brockwell: I think people being less open to fair argument, less open to hear the arguments against, more willing to override them, less willing to give audience to people who oppose.

Q38 Julie Morgan: And in your position did you see this process happening?

Lord Butler of Brockwell: Yes. Again, I do not want to, as it were, pick out one of the Prime Ministers that I worked for, but I think one has got to recognise that this is a very, very exhausting job and inevitably as time goes on two things perhaps happen: You become more impatient of people who, as you see it, are putting pettifogging obstructions in your way; and if you have been successful you become more confident in your own abilities and that leads you to tend to override them as time goes on.

Q39 Julie Morgan: And what do you think should be done to stop that happening? You have obviously referred to the power of Parliament. What sort of effective mechanisms can you specify that would actually stop that happening?

Lord Butler of Brockwell: I think self-discipline—although it is a very hard thing to ask of people, as I say, when they are under tremendous strain. If I were ever in that position that is what I would think was important, wearying though that would be, but then

I think that ought to be buttressed by institutions that support it, and that is what I think all this is about.

Q40 Julie Morgan: And the buttressing by institutions you think can overcome the personality of the person who is the Prime Minister?

Lord Butler of Brockwell: They will always be in opposition to each other, one has got to recognise that, but yes, I think the very fact that Parliament exists, the very fact that elections have to take place every five years, these are important parts of our institutions that have that effect and we always ought to be trying to both keep them in place but where necessary reinforce them.

Q41 Julie Morgan: Thank you. And one quick question on the earlier subject we were discussing, obviously you have not been in your position now for 10 years but during that time we have had devolution and the setting up of the Scottish Parliament and the Welsh Assembly. How much do you think those bodies have been involved in or consulted on organisational changes in departments?

Lord Butler of Brockwell: I really do not know because they did not exist while I was in government. It is a whole different subject but I do think that devolution and empowerment are extremely important areas of government and another tendency that needs to be counteracted is the tendency towards centralisation.

Julie Morgan: Thank you.

Q42 Mr Prentice: Can I go back to departmental reorganisations. Lord Butler, Charles Clarke said that splitting the Home Office would be deeply irresponsible. Was he right?

Lord Butler of Brockwell: I do not really feel competent to comment on this because it is 10 years since I was in government and the situation has changed hugely. You can see the burdens on the Home Office now. They are of quite a different scale from when I was in government.

Q43 Mr Prentice: Okay. But you said right at the outset that we make these changes far too casually. How should we do it? Should the Government publish—where this is not a new administration—a consultation document, as it did with reorganisation of the police forces, and invite comments from the judiciary and others with an interest before embarking on a major change which a recent Home Secretary has said is irresponsible?

Lord Butler of Brockwell: Yes, I think that would be good practice, but what would enforce it is if there was a greater parliamentary process than there is at the moment so that instead of there just being an order that Parliament can pray against there was something that required a debate, maybe hearings before a select committee and the Government to make its case and to take time to consider.

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Q44 Mr Prentice: Okay. Are there examples in other comparable countries with Westminster systems, perhaps Canada, where they do this, where parliaments must approve major departmental changes?

Lord Butler of Brockwell: I believe there are but I am not expert on it. Professor Hood maybe better informed about that than I am.

Q45 Mr Prentice: Just before I get on to Professor Hood what about the costs of reorganisation, because the Government would not come forward with any figures at all? The Home Secretary said that the costs would be met from the departmental budget, and that was a point that Gus O'Donnell mentioned at an earlier meeting of this Committee. How much do these reorganisations actually cost?

Lord Butler of Brockwell: Again, the answer is—

Mr Prentice: In your day?

Lord Butler of Brockwell:—More than you think. They are very expensive.

Q46 Mr Prentice: I would love some figures from your day; you must know.

Lord Butler of Brockwell: Yes! All I remember, and forgive me it is 10 years ago—

Mr Prentice: Oh come on!

Lord Butler of Brockwell: You know that parliamentary questions were put down about the cost of changing the notepaper and the cost was huge.

Q47 Mr Prentice: I put questions down but I never got a straight forward answer so that is why I am asking you.

Lord Butler of Brockwell: I am not altogether surprised that you did not, but the cost is great. I noticed what Gus O'Donnell said in his answer, and no doubt that is correct, but if the resources are being used for that they cannot be used for something else which might be more useful to the Department. This is what I meant when I said earlier that I think one has got to ask serious questions about whether the benefit is worth both the money cost but also the transitional cost.

Q48 Mr Prentice: Can I ask Professor Hood then who might be able to tell us about the costs of these reorganisations. Obviously there is the opportunity cost but also the cost in pounds, shillings and pence.

Professor Hood: As it used to be. I do not know of recent work on this. I have an idea that my former colleague, Andrew Dunsire, did some work 10 or 15 years ago on this and, if you like, I can look back and see if I can find that.

Q49 Mr Prentice: It is not a big issue.

Professor Hood: But I agree it is an important issue, absolutely.

Q50 Mr Prentice: Do we need a written constitution because, Lord Butler, you were telling us just a few moments ago that the Civil Service Code and

Ministerial Code needed to be covered by a statutory instrument? Are we moving towards and would you like to see a written constitution?

Lord Butler of Brockwell: No, I have always been disposed against a written constitution. It may be another area where, if the Chairman will allow me, my views might yet change, but I think you are right we are moving towards things being increasingly codified so this is an incremental process. I would prefer to keep it as an incremental process.

Q51 Mr Prentice: And that is your view, Professor Hood?

Professor Hood: I might take a different view from Lord Butler about the desirability of written constitutions in general, but what I would say in terms of the issues you have been discussing, for example, about the disposition of the executive machinery of government and of the Civil Service, in many cases the United States for example, the constitution says nothing about the civil service and this is something that has not really been covered by the constitution. In Germany of course there is a provision in the basic law about the traditional rights of the civil service that are considered, but I think in most cases the issues that you are discussing today about machinery of government changes and reorganisation of government would not, I think, greatly change by a written constitution.

Q52 Mr Prentice: They would not? Okay. Let me move on just briefly to another matter. Lord Butler, you told us earlier that power corrupts. We have a retiring Chairman of the Committee on Standards in Public Life, Sir Alistair Graham, who has said pretty scathing things about this Government and the Prime Minister. Do you think he was right to raise these concerns in the way he has?

Lord Butler of Brockwell: Well, he was appointed as a member of an important public body. I think he has got a right to say it. Whether all his criticisms were fair, I would not wish to attach myself to all the criticisms that he made.

Q53 Mr Prentice: Do you think he has been treated fairly?

Lord Butler of Brockwell: I simply do not know the details of that. The question is whether his appointment should have been continued? I really have not got a view on that.

Q54 Mr Prentice: Okay. We still do not have a replacement for Sir Alistair Graham who is standing down next week on 25 April and he tells us in a letter that has been copied to us, that went to the Cabinet Secretary on 13 March, that he has been raising this issue about who was going to succeed him for seven or eight months but that nothing has happened, and now there is going to be this, I do not know how you would describe it, interregnum Committee on Standards in Public Life. It is an important body, you have just acknowledged that yourself and there is not going to be anyone heading it for months. Is that good administration?

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Lord Butler of Brockwell: In principle no, it is not. Again, I do not know the details. There may be a good reason why there is a delay. One can think of one obvious reason that the Prime Minister does not want to make this decision before his successor comes into office. That might be a good reason but, again, I do not know the ins and outs of it.

Q55 Mr Prentice: Should the Chairman of the Committee of Standards in Public Life be a ministerial appointment anyway?

Lord Butler of Brockwell: If it is a body that is set up by the Government, yes I think so. If it is a parliamentary body, then clearly Parliament ought to have a role in it.

Q56 Mr Prentice: Okay. You are advising the Leader of the Opposition on public trust. Has trust in government been eroded over recent years and, if so, why?

Lord Butler of Brockwell: I think the opinion polls suggest that it has.

Q57 Mr Prentice: Yes?

Lord Butler of Brockwell: But that again has been quite a long process. It is not just a process that is confined to the present Government. I think that there are complex reasons for this. My own theory is that a long period of relative peace and prosperity has allowed people to treat government more frivolously, particularly the media to treat it more frivolously, and because the media give us what we want, we are responsible for that—we as citizens I mean. I noticed when I was in government that when things got serious for some reason, for example during the Falklands War or the Gulf War, then people's attitudes towards government changed and became more serious, and that again was reflected in the media, but it is a price I think for peace and prosperity that people tend increasingly to regard government as part of the entertainment industry and to—

Q58 Mr Prentice: That is a bit sad, is it not?

Lord Butler of Brockwell: It is sad but I do not think one would say it is worth having a war to prevent that.

Q59 Mr Prentice: I asked the Prime Minister about this and what steps he had taken to foster and promote public trust in those in public life, and he goes on at length to say this Government was the first to publish a Ministerial Code, a document on travel by ministers, a model contract, and a code of conduct for special advisers, annual lists of travel by Cabinet ministers, lists of gifts given to ministers, and these are all apparently innovations of the present Government.

Lord Butler of Brockwell: No, I think the Ministerial Code was published under the Major Government.

Mr Prentice: It was. This is obviously an error! But despite all this there is this erosion of trust.

Lord Butler of Brockwell: Yes.

Chairman: He even tried a war, did he not, and that did not quite do it!

Q60 Mr Liddell-Grainger: I just wonder, Lord Butler and Professor Hood, where this has all gone wrong because we have now got Andrew Turnbull and Richard Wilson being highly critical of government and you yourself have had a slight conversion on the road to Damascus. Where has it all gone wrong and when did it go wrong? Did it go wrong with the media, as you rightly said, getting more involved? Did it go wrong because of contempt from Number Ten? Did it go wrong because Parliament has taken its eye off the ball? When did it happen and how did it go wrong?

Lord Butler of Brockwell: I think it has been a long process and I do not think I can add to the surmise that I offered to Mr Prentice. I think, and this is a good thing—at least I think it is a good thing—people now do discuss these things more openly. I think Lord Wilson, Lord Turnbull and I speak more publicly than our predecessors did, partly encouraged by this Committee. Sometimes I think we find we have spoken more openly than we would have wished to have done! Things have eased up in all those ways but that is not a reason I think for things going wrong. My feeling about things going wrong is what I said to Mr Prentice, but then one has also got to say, I suppose, the way in which politicians have responded to it.

Q61 Mr Liddell-Grainger: So do we need to have better liaison with senior civil servants and permanent secretaries either in private or in this sort of forum where we can get to the bottom of a lot more of what is actually going on because it seems there is a breakdown somewhere along the line that has happened, as you said, over a period of time?

Lord Butler of Brockwell: I am all for, and was when I was in government, close links between the Civil Service and Members of Parliament and indeed with all people in public life. I was—and am—in favour of debate and discussion being as open as one can manage. Civil servants have always got to be careful of course when they are in office because they are the servants of the government of the day and that constrains them at least in public, but I think open discussion is very helpful.

Q62 Mr Liddell-Grainger: We have got the situation at the moment where Gus O'Donnell has been highly critical of a report by another select committee which suggested the removal of a permanent secretary, not in the present job he is in but in the job he was in before, and he has been very critical and said that should not be the case. Surely the role of Parliament is to scrutinise the role of the executive? Therefore surely it is our role to suggest that? Whether or not that is taken on board is another matter but surely that is part of this process, is it not?

Lord Butler of Brockwell: I have not seen what Gus O'Donnell has said about it but my immediate reaction is that it is perfectly proper for a select committee to criticise a permanent secretary and to criticise an accounting officer. I think it is a different thing and I think where in my view it steps beyond the line is if the parliamentary committee calls for

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the dismissal of that permanent secretary because this is a disciplinary matter about which that person, like any other civil servant, has got rights, and it ought to be the subject of a proper procedure and not something which I think Parliament ought to involve itself in directly.

Q63 Mr Liddell-Grainger: But why not? Because we have no direct access to a permanent secretary unless they wish to come before a select committee; we cannot force them to do so. If they make a mistake—any mistake in the future—the only recourse that we have as parliamentarians to get to them is if they do it voluntarily. We cannot actually do anything about it. Surely we have got to have that ability to be able to ask for discipline and if it does not happen then they should appear before a select committee to answer for what they have done or not done.

Lord Butler of Brockwell: I repeat, I do not think that Parliament is the body that ought to exercise disciplinary powers over a civil servant. There is a disciplinary regime within the Civil Service, within the department to which that person in fairness ought to be subject. Parliament's job is directly with the minister.

Q64 Mr Liddell-Grainger: Professor Hood, what do you say?

Professor Hood: Well, if I could go back to your questions about where did it all go wrong. Might I say something about that?

Mr Liddell-Grainger: Please do.

Professor Hood: I think we ought to be careful about assuming that this is the first time that people have expressed worries about breakdown in effective government and about the quality of the government machine. In the 1960s there was a great "what is wrong with Britain?" debate following on from Britain's then apparently poor relative economic performance after World War II, the loss of Empire, the search for a role, and much blame at that time was being heaped on the Civil Service, with very strong attacks on the cult of the amateur and on what was seen as incompetent historians and classicists in what ought to be a modern, technical government. Some of that, if you look back, ran very deep. Even if you go back to the previous century, one of the things that sparked the famous 1854 Northcote-Trevelyan report was the terrible performance particularly in military procurement in the Crimean War which Britain nearly lost, and the feeling that such a chaotic administration just could not be allowed to continue, so I do not think we should assume that discontent, shall I say, with the quality of government is something new. Even issues about trust and alleged loss of trust have to be looked at carefully, I think. The numbers that we have over a substantial period of time go back only to the 1970s so we have no means really of knowing what levels of trust were before that. The measure that has been most consistently applied over those 30 years or so relates to a question which asks how much confidence do you have that governments will put country before party, which is rather an ambiguous question and quite hard to interpret.

Much of the loss of trust in government on that, I believe quite imperfect measure, took place actually in the 1970s and subsequent changes have been less dramatic. If one distinguishes the survey evidence on trust in politicians from that in civil servants, we see much less evidence of declining trust in civil servants as against politicians, so I think we have to be quite careful about what is the evidence on which we think there is a long-term decline in trust and in what particular part of government is this trust changing? So I think that I would want to qualify some of the background in terms of the notion that there is something unique here or that we are in some kind of one-way street of loss of trust. I am not sure that there is clear evidence of that.

Q65 Mr Liddell-Grainger: Can I take another example—Nigel Crisp who was seen to be hounded out of the NHS as Permanent Secretary to cover up the failings of all sorts of things. He had no recourse and I suspect he fell on his sword. So you get one stage where we cannot criticise because we cannot discipline. We get another stage where we cannot do anything because the guy has probably done the honourable thing to save the minister. I always thought it was the minister that took the blame, but it seems to be the civil servant that now will be blamed whether they like it or not. Has that ethos changed?

Lord Butler of Brockwell: Yes, I think it has changed in that civil servants are now more exposed, they are more public figures. The position of just appearing before the Public Accounts Committee, as they used to, has changed and they appear before select committees of all sorts, and I think that that is something that has changed about the world, and not necessarily for the worse. In this Democracy Task Force report one of the things which we say is that while you cannot separate policy and administration, ministers have got the right to expect that permanent secretaries run the administration properly and run the management properly. Just like the NAO looks at financial propriety, it would be a good thing if there was a similar body working to a similar select committee that looked at the quality of a civil servant's management, and that should be exposed and the minister should not have to take the rap if it is not their fault. I think this Committee has made the point, and I agree with it, that our systems of accountability have not yet adapted to the new pattern of the world.

Q66 Mr Liddell-Grainger: But are you talking about departments or individuals or both?

Lord Butler of Brockwell: The department is composed of individuals so, yes, I am talking about distinguishing between the individuals within a department, particularly between the minister and the civil servants.

Q67 Mr Liddell-Grainger: Can I just finish on one point. Both Gordon Brown and David Cameron are taking their views on the Civil Service extremely seriously and that is obvious from what Gordon

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Brown has said and we have been discussing this report today. Do you think there is a golden age for the Civil Service around the corner as to whoever takes over?

Lord Butler of Brockwell: No, I do not. I agree with what Professor Hood said. We are always preoccupied by the criticisms of the moment and tend to suppose that these are unique and that there have never been criticisms in the past and that things are particularly bad now whereas they were very much better in the past, and I think that that is an illusion.

Professor Hood: I would only want to point out that if you go into local government and some tragedy occurs, say in a social services department as we see from time to time, it is normal or it very commonly happens that the director of social services has to go. Why should the Civil Service be any different?

Q68 Mr Liddell-Grainger: But it is, is it not, because we have got a permanent secretary at the moment who is being protected, the Cabinet Secretary throwing dicky fits and a select committee saying this man should be—let us be frank, rural payments and foot and mouth were two fairly large disasters. Yet it seems to be all right to be promoted on the back of it. Are you saying, Professor, that that is wrong?

Professor Hood: I do not know the details of that particular case.

Q69 Mr Liddell-Grainger: You must be one of the few.

Professor Hood: I am just saying that in other areas of public service it is considered to be normal for executives to be dismissed for serious failures. The same typically and increasingly has applied to chief executives of health trusts who I believe have been called “dead men walking” in that context. So I think that there has to be a case as to why senior civil servants should be considered to be different if those are the standards that apply in local government or the Health Service.

Q70 Mr Liddell-Grainger: Then who should administer it? Should it be the Commissioner for Standards, should it be Parliament, should it be an ex-Cabinet Secretary? Who should do it?

Professor Hood: I think presumably there has to be some kind of disciplinary role. I think that in some of these cases that we have talked about they have been agreed departures, have they not, rather than formal dismissal?

Mr Liddell-Grainger: You mean a “golden goodbye”? Is that what you are trying to say? Good pension, payoff, health care? Oh yes, I seem to remember those!

Q71 Chairman: We do not want to get into this, it is too complicated, but is not part of the difficulty that we do not often know with any clarity exactly who did what?

Professor Hood: Yes.

Lord Butler of Brockwell: Correct.

Q72 Chairman: And that our doctrine of ministerial responsibility deliberately makes all that extremely opaque, for good constitutional reasons, which actually makes this bit of the enterprise extremely difficult?

Professor Hood: Yes.

Lord Butler of Brockwell: That is correct and that is why I think that Parliament and its committees needs a body like the NAO that has access to papers and can look at these things in detail, to advise it if Parliament is going to play a more effective role in these matters.

Q73 Chairman: Thank you for that, that is a suggestion we will reflect on and probably take forward. As we end can I just come back to a couple of things very quickly. I am still worrying about your conversion experience, you see, because when I read the conclusion to your Iraq report, which we have spoken to you about before—and I know that reports are always collective forms of word exercises—in that you say, talking about the machinery of government aspect of it, at the end in your conclusion: “We do not suggest that there is or should be an ideal or unchangeable system of collective government, still less the procedures are in aggregate any less effective now than in earlier times”, and yet now in this task force we are told there is something wrong with the central machinery of government. Something has happened from a point where you say there is nothing wrong compared with before to a position now where there is something fundamentally wrong with the central machinery of government. I still do not think we have quite got under the skin of this argument to see what has produced this change.

Lord Butler of Brockwell: I think, if I may say so, you are exaggerating the extent to which this is a personal conversion of me. I was party to both these reports and I stand by what they have said and I think that most people do agree with the way I have put it—and before this Committee I was looking at my evidence again—which is that there are things that can be improved about the operation of the centre of government, and I do not think anybody would deny that.

Q74 Chairman: Okay. When this report makes these various recommendations, my reaction is to say, “What is the evidence for them?” Or is this some sort of political spasm. It says we must cut in half the number of special advisers. We have had people in front of us of great eminence—Professor Anthony King for example—who say that if special advisers are a good thing, and people, including former Cabinet secretaries, line up to tell us they are a good thing, maybe we should have more of them, and as for the evidence for cutting them in half, there is none. And similarly it says we should scrap the Delivery Unit. Again we have had senior civil servants come in here and tell us how valuable the

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Delivery Unit has been in sharpening up departments. Where was the evidential basis for these recommendations?

Lord Butler of Brockwell: The argument for it is in the report and, as with any report, I expect there are some recommendations that you agree with and some recommendations that you do not agree with, and it is open to anybody to take that view. I think it is the hope of the task force that these are recommendations that will be taken seriously, not absolutely adopted in toto, but that they will be a useful input into the formation of attitudes to these things in policy by an incoming government.

Q75 Chairman: Is that a distancing from some of these recommendations?

Lord Butler of Brockwell: No.

Q76 Chairman: Can I just try this then: I think you referred to the Haldane Committee, Professor Hood, and that was the foundation of the modern departmental system of government. The question I would ask—and I know we have not got time to answer it really—is do you think it is time we had a new Haldane in the sense that sometimes we have arguments made that actually the departmental structure put in place at the end of the First World War is not one actually that fits very well to the kind of problems that government now has to deal with, and some people, for example Geoff Mulgan who has worked inside government, have been arguing quite radically for a different way of organising government to reflect the world that we now have to engage with. Do you think there is something in this?

Professor Hood: I think that the centenary of the Haldane report is only just over 10 years away and it cannot hurt once in a century to step back from the details, reflect on where we have come in the long term and what the template might be for the future. In terms of both of the two views that I set out to you at the outset, that would be entirely consistent with both of them.

Lord Butler of Brockwell: I agree with that. I think discussion of these things is always helpful, but I do just add the rider that we were saying before, please remember the transitional cost of any further upheaval.

Q77 Chairman: Yes. Almost done. Cabinet secretaries, a fine breed of men entirely. We have only had 10 of them since they were invented by Hankey at the end of the First World War but four of them have come in the last 10 years. Has the turnover rate become too great?

Lord Butler of Brockwell: I hugely valued—I do not know whether the nation did!—having 10 years at the job. You have got an opportunity to make an impact during that time. And I am very glad that the present Cabinet Secretary, Gus O'Donnell, was appointed at a much younger age than his predecessors and he will have a good long run at doing the job. So I think, yes, if you are going to make an impact, and particularly if you are going to make an impact on an organisation as big as the Civil Service, having a decent run at it is a good thing.

Q78 Chairman: Good. Well, some people will say that Gordon Brown is going to end “sofa government” because he cannot see the point of a piece of furniture that can accommodate more than one person! However, we have had a fascinating double act today. We have had deep wisdom from inside the system and we have had absolutely equivalent academic analysis and the two together I think have vastly enriched our understanding of these things, so I think we are, as ever, hugely grateful to you for coming along and talking so freshly and openly and interestingly to us.

Lord Butler of Brockwell: Well, Chairman, thank you. I hope you have recognised that this was an Oxford team.

Chairman: We will let that pass. Thank you very much indeed.