



House of Commons  
Public Administration  
Select Committee

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**Ministerial  
Accountability and  
Parliamentary  
Questions:  
Government Response  
to the Committee's  
Fifth Report**

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**Second Special Report of Session  
2005–06**

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## The Public Administration Select Committee

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

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### Committee staff

The current staff of the Committee are Eve Samson (Clerk), Clive Porro (Second Clerk), Lucinda Maer (Committee Specialist), Anna Watkins (Committee Assistant), Sue Holt (Secretary) and Phil Jones (Senior Office Clerk).

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## Second Special Report

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1. The Public Administration Select Committee reported to the House on *Ministerial Accountability and Parliamentary Questions* in its Fifth Report of Session 2004-05, published on 22 March 2005 as HC 449-I. The Government's Response to the Report was received on 20 December 2005. Regrettably this exceeded the two month period for responses which the Government recently reaffirmed in its revised guidance to departments.<sup>1</sup> On 17 January we also received an additional note from the Leader of the House reporting on the review, recommended in our report, of how the new arrangements for dealing with Questions before a Prorogation have been working. These documents are appended to this report.
2. The Response and its supplement raise a number of potentially significant issues. For example, under the Code of Practice on Access to Government Information, which governed these matters prior to the Freedom of Information (FoI) Act 2000, the Government accepted a recommendation of the Public Service Committee, in July 1996, that the relevant exemption from that Code should be specified when departments failed to provide an answer to a Parliamentary Question (PQ). We recommended this could now be done by analogous reference to the FoI exemptions without prejudicing the separate and distinct character of Parliamentary proceedings.
3. The Government acknowledges that, instead, the practice of citing the relevant exemption has been abandoned. It argues, essentially, that the deadlines for replying to PQs make this difficult and that it might mislead Members into thinking that a full public interest test has been applied. We believe this contention will need to be explored further.
4. Similarly the performance of three departments over Prorogation Answers – the Home Office, the Department of Trade and Industry and the Department for Environment, Food and Rural Affairs, revealed by the Leader of the House's review—adds to our concern that the performance of certain departments in responding to Members is in need of further monitoring.
5. The short duration of the 2004-05 Session of Parliament and the need to evaluate the impact of the FoI Act on the pattern of answers over this current, longer session lead us to delay further consideration of this subject until the end of the 2005-06 session. At that stage we will give careful thought to undertaking a deeper inquiry, including oral evidence from appropriate witnesses, rather than the usual annual exercise normally conducted by means of written evidence and correspondence.

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1 Cabinet Office, Departmental Evidence and Response to Select Committees, July 2005, para 108

## Appendix 1

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### **Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report of Session 2004–05**

The Government welcomes the Fifth Report of Session 2004-05 from the Public Administration Select Committee, the latest in a series of reports on Ministerial Accountability and Parliamentary Questions.

Conclusions and recommendations

**1. We understand that the Cabinet Office is actively considering ways in which to disseminate good practice across departments. We will return to this matter in a future report. (Paragraph 2)**

The Government recognise the importance of ensuring that those working in Parliamentary Branches across all Departments have access to information and advice, and are able to share and disseminate best practice. There are currently a number of initiatives in place to enable Parliamentary Branches to do this.

The Parliamentary Clerks Working Group (PCWG) was established in November 2002 by the then Leader of the House the late Rt. Hon. Robin Cook MP. It meets on a regular basis. The Working Group is currently developing a Parliamentary Clerks Guide to ensure best practice is shared across departments. This guide will be produced in consultation with the House authorities. The Government would be happy to share a copy of the guide with the Committee and would welcome any comments.

In November 2004, the then Leader of the House, the Rt. Hon. Peter Hain MP, launched a proof of concept website for Parliamentary Clerks. The electronic parliamentary community (e-PC) website provided a central source of information and guidance for all Parliamentary Branches. This website is currently suspended following the decision by the Cabinet Office to put the work of the E-Government Unit (Knowledge Network) out to tender. The effectiveness of a related database, which allowed for the electronic exchange of parliamentary questions and answers and written ministerial statements, is currently being evaluated by the Office of the Leader of the House of Commons.

The Leader of the House, the Rt. Hon. Geoff Hoon MP, will be hosting a seminar for Parliamentary Clerks on 8 December to stress the importance of ensuring that Parliament is informed of policy announcements in the first instance and that good practice is exchanged between departments.

We note that the Committee plans to return to this matter in a future report and we would welcome any comments the Committee would make on this issue.

**2. We are concerned that departments have failed to honour fully their undertaking to provide the specific Code exemption where they have failed to give an answer on public interest grounds. We are particularly concerned that the Home Office has been such a poor performer. This appears to be of a piece with its inability to deal with named day**

**Parliamentary Questions and to meet its own deadlines for correspondence (Paragraph 5)**

The Government acknowledges the concern of the Committee on this issue. In response to the Committee's ninth report of Session 2001-02, the *Guidance to Officials on Drafting Answers to Parliamentary Questions* was amended to reflect the Committee's recommendation that where there was a refusal to provide information the relevant exemption under the Code should be provided.

The *Code of Practice on Access to Government Information* was superseded by the *Freedom of Information Act* in January 2005, and the revised version of *Guidance to Officials* sets out the practice for Parliamentary Questions where information is refused.

The House authorities were consulted on the guidance and copies have been circulated to all Departments. Copies are also available on the Cabinet Office website.

**3. The Committee will monitor the effect of the Freedom of Information Act on Parliamentary Questions, and we will publish our findings in a future report on this subject. (Paragraph 6)**

The Government will of course consider and respond to the findings of the Committee in any future reports on the *Freedom of Information Act* and Parliamentary Questions.

**4. We believe the Cabinet Office guidance, revised to take account of the Freedom of Information Act, is inconsistent with earlier practice and with the Government's recent response to us which undertook to maintain the approach in future that exemptions must be cited for each situation where information is not provided in the Parliamentary Answer. As with the Code, it should be possible to interpret the public interest by analogous reference to Freedom of Information Act exemptions. For example an answer withholding information for a particular reason could state that "the parallel exemption under the Freedom of Information Act would be ...". Such phraseology would be helpful without prejudicing the separate and distinct character of Parliamentary proceedings. We recommend that Cabinet Office guidance should be reconsidered accordingly. (Paragraph 10)**

The Government acknowledges that, with the implementation of the Freedom of Information Act in January 2005, it has not proved possible to maintain the previous approach that exemptions should be cited where information is not provided in response to a Parliamentary Question.

The Government does not regard it as "possible to interpret the public interest by analogous reference to Freedom of Information Act exemptions". However the Guidance does provide that a response should explain, in terms similar to those in the Freedom of Information Act, the reasons for the refusal. The Government believes that this strikes the right balance: it responds in terms that echo the Act without prejudicing the differences between the two processes.

The Government is concerned that any reference to Freedom of Information Act exemptions in responses, even in terms of the phraseology suggested by the Committee, will give the Member or Peer the impression that the request for information in the

Parliamentary Question has been subject to a full public interest test when in fact it is not possible to do this within the time constraints for answering Parliamentary Questions.

Under the Freedom of Information Act those in receipt of a written request for information are under a statutory obligation to reply to that request promptly and in any event within 20 days. However where the public authority needs to consider the balance of the public interest in relation to disclosure, it is not obliged to comply with its duties under section 1 of FOIA (the right to access) until such time as is reasonable in the circumstances. The deadlines for responding to Parliamentary Questions are not compatible with this. Ministers have an obligation to Parliament to ensure that Members receive a substantive response to their named day question on the named day and to endeavour to answer an ordinary written question within a working week of it being tabled.

However, the Government firmly believes that greater access to information should do nothing to undermine the crucial role of Parliament in holding the Government to account.

Where there is a change of policy in relation to the release of information the Government is of the view that where appropriate the House should be informed that this is the case.

The Cabinet Office guidance advises Departments that,

“Where a decision on an FOI case results in a change of policy and that information which was previously withheld is now being released, consideration should be given to informing both Houses, for example, through a written ministerial statement”.

**5. We recommend that the annual report on departmental performance on handling correspondence should be accompanied by a similar report on departmental performance on named-day questions. (Paragraph 13)**

The Government is not persuaded that a report is necessary at this point. Departments regularly publish updates on their performance in response to PQs.

However, the Leader of the House of Commons will keep under review the need to provide Parliament with an annual report on the performance of replying to Parliamentary Questions within agreed deadlines.

**6. We would strongly deplore any attempt by departments to use the new arrangements for dealing with Questions before Prorogation, intended to create greater transparency, as a means of avoiding answering a Question. We are particularly concerned about the performance of the Home Office in this respect. We recommend that the Leader of the House should, by the end of the year, review how the new arrangements have been working and report to the House. (Paragraph 16)**

The Leader of the House of Commons will submit a memorandum to the Committee at the end of this year on the use of “prorogation answers”.

## Appendix 2

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### **Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Fifth Report of Session 2004–05 – Addendum on "Prorogation Answers"**

The Government has recently responded to the majority of the recommendations in your Fifth Report of Session 2004-05 on Ministerial Accountability and Parliamentary Questions. In addition, the Committee recommended that I report on how the new arrangements for dealing with Questions before Prorogation have been working:

**"We would strongly deplore any attempt by departments to use the new arrangements for dealing with Questions before Prorogation, intended to create greater transparency, as a means of avoiding answering a Question. We are particularly concerned about the performance of the Home Office in this respect. We recommend that the Leader of the House should, by the end of the year, review how the new arrangements have been working and report to the House."**

The Committee will recall that, in December 2003, Mr Speaker wrote to the then Leader of the House (Rt Hon Peter Hain MP), raising concerns about the number of 'I will write' replies and the inaccessibility of subsequent responses. In your report on 'Ministerial Accountability and Parliamentary Questions' [Third Report, HC355, para 29] you raised similar concerns. The Leader of the House of Commons' office worked closely with House officials in formulating measures to address those concerns. These were outlined in a Written Ministerial Statement issued on 21 July 2004 and guidance was issued to Government departments.

The Government believes that these new measures are beneficial on two fronts; (i) the process is now more open and transparent as the final answer is printed in Hansard, and (ii) departments have been more disciplined in keeping the number of 'I will write' replies to a minimum.

The policy on answering Parliamentary Questions is that "Named day questions must be answered on the date stated; ordinary written questions should normally be answered within a working week". I remain committed to ensuring that these deadlines are achieved and am putting in place systems to ensure that performance against these guidelines is effectively monitored.

The evidence gathered compares the periods between Prorogation being announced and actual Prorogation from the 2002-03 and 2003-04 Sessions, i.e. the prorogation periods immediately before and after the changes were introduced. It does not include the period prior to dissolution in April 2005 as there is no other period with which to make a reasonable comparison.

#### **'I will write' replies**

The numbers of Parliamentary Questions tabled to departments in the two periods were comparable (2530 and 2441 respectively). The number of 'I will write' replies given during these periods fell dramatically from 556 to 130. I believe that a majority of Government

departments have followed the guidance and used the 'I will write' reply only when there has been a particular reason for delay.

However, the Ministry of Defence were responsible for issuing 124 'I will write' responses on the day of Prorogation. These relate to questions tabled before Prorogation was announced, for which they had been unable to provide a substantive response, and to which a prorogation answer would not have been appropriate. The Department hoped to provide substantive answers to these questions, and kept that option open by issuing the 'I will write' responses. However, as there was not an edition of the Official Report published during this short period none of the responses mentioned above would have been made available in this way. The MOD will be introducing a new Parliamentary Toolkit after Easter this year which should improve their ability to chase late replies and thus avoid the need to use the 'I will write' response at the end of a session to such a degree in the future.

The new procedure does allow for the substantive answers to 'I will write' replies to be printed with the written answers, giving greater transparency to Members and the public. Departments should ensure that when an 'I will write' answer is given, the substantive response should be issued before the last edition of the Official Report for that session is produced.

### **Prorogation replies**

The reduction of 'I will write' answers was due largely to the availability of an alternative option, the prorogation answer. The practice of issuing prorogation answers was first made available at the end of the 2003-2004 session following concerns that far too many questions remained unanswered at the end of the session. Departments issued 456 prorogation answers at this time. The majority of Government departments have followed the rules and spirit of the guidance. Most departments only used the prorogation answer when they had been unable to provide a substantive answer due to the time constraints between the tabling of the Question and Prorogation. There is some anecdotal evidence that a number of Members took advantage of the opportunity to re-table their question in the next session, following a prorogation answer.

The performance of three departments, the Home Office (as highlighted in your report), the Department of Trade and Industry and the Department for Environment, Food and Rural Affairs, is noted. Between them, they were responsible for nearly 80 per cent of the 456 prorogation answers. Moreover, a high number of these answers related to questions tabled before the prorogation period was announced. Details of each department's performance are attached (Annex A). Although Members remain free to re-table the question in the next session, the intention of the change in procedures was not to allow departments the means to avoid giving a substantive answer to a question tabled in good time.

These concerns have been raised with the individual departments and the guidance, which sets out the expectations, has been re-issued to all Parliamentary Clerks. I also raised the importance I attach to providing substantive and timely answers to Parliamentary Questions at a recent meeting of the Parliamentary Clerks Working Group.

I intend to monitor future performance and would welcome any observations the Committee may wish to present to me on future performance in this area.

## Annex A — Use of Prorogation answers by Government Department (Period 4-18 Nov 2004)

Dept	Number of 'Prorogation answers'	Number of 'Prorogation answers' given for questions which were tabled before Prorogation was announced
Attorney General	1	0
Constitutional Affairs	0	0
Cabinet Office	0	0
Culture Media and Sport	4	2
Defence	28	0
Education and Skills	18	0
Environment, Food and Rural Affairs	56	11
Foreign Office	5	1
Health	17	3
Home Office	231	94
International Development	0	0
Leader of the House of Commons	0	0
Northern Ireland Office	15	2
Office Deputy Prime Minister	4	0
Prime Minister	0	0
Scotland Office	0	0
Trade and Industry	75	46
Transport	1	0
Treasury	1	0
Work and Pensions	0	0
Welsh Office	0	0

Data source: Government Department Parliamentary Branches

## Reports from the Public Administration Select Committee since 2005

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### Session 2005–06

First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
First Report	A Debt of Honour	HC 735
Second Report	Tax Credits: putting things right	HC 577