



House of Commons  
Public Administration Select  
Committee

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**Politics and  
Administration:  
Ministers and Civil  
Servants:  
Government  
Response to the  
Committee's Third  
Report of Session  
2006–07**

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

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## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioner for England, 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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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>

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## Tenth Special Report

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1. The Public Administration Select Committee reported to the House on *Politics and Administration: Ministers and Civil Servants* in its Third Report of Session 2006–07, published 26 March 2007 as HC 122. The Government Response was received on 22 September 2008 and is published below as an Appendix to this Report.

2. In its guidance to Departments, the Cabinet Office states that they should “aim to provide the considered Government response to ... Select Committee Reports within two months of their publication”.<sup>1</sup> It has taken the Government eighteen months to reply to our Report. We see no reason, given the substance of the Government’s response, why such an extended delay was necessary in this case.

## Appendix

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Since publication of the Committee’s report, the Government has increased Parliamentary scrutiny of key public appointments through the introduction of pre-appointment hearings and announced its intention to bring forward legislation to enshrine the core principles and values of the Civil Service in law. The Governance of Britain—Constitutional Renewal White Paper (Cm7342) published in March 2008, makes clear that the Government believes that it is now time to put the role, governance and values of the Civil Service on a statutory basis.

The Government welcomes the Committee’s views on its proposals for Civil Service legislation set out in the Committee’s report Constitutional Renewal: Draft Bill and White Paper (HC499) published in June 2008. The Committee’s recommendations and conclusions are being considered alongside the report of the Joint Committee on the Draft Constitutional Renewal Bill published in July 2008 (HL166, HC551).

In developing its proposals on both public appointments and legislation for the Civil Service, the Government has taken account of the recommendations of this Report and the Committee’s other relevant Reports.

The Government’s response to the conclusions and recommendations of the Committee’s report is set out below.

**1. “Politicisation” is a term which covers a wide range of meanings. In this report, we use it to mean political involvement in administration, in particular in relation to the appointment or promotion of public servants. We do not use it in its usual pejorative (and negative) sense, but as a way of exploring aspects of the governing relationship between ministers and civil servants. (Paragraph 17)**

The Government agrees with the Committee that “politicisation” is a term which covers a wide range of meanings. It notes that for the purposes of this report, the Committee uses it to mean political involvement in administration as a way of exploring aspects of the governing relationship between Ministers and civil servants and not in its usual pejorative (and negative) sense. The Government believes that accusations of

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<sup>1</sup> *Departmental Evidence and Response to Select Committees (‘The Osmotherley Rules’)*, para 108. Available online at [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

'politicisation' contrast with the reality of a constructive relationship between Ministers, permanent civil servants and special advisers which enables the policies of the government of the day to be implemented.

**2. We agree that under our current constitutional arrangements there will never be precise clarity about the boundaries of ministerial accountability. That in itself suggests that we should be wary of constitutional changes which reduce ministerial responsibility without clearly transferring responsibility and accountability elsewhere. (Paragraph 29)**

**3. It is clear that there is no consensus, either among politicians or officials, about the way in which ministerial and civil service responsibilities are divided. This means there can be no consensus about where accountability should lie. (Paragraph 39)**

The Government agrees with the Committee that we should be cautious about constitutional change which could reduce Ministerial responsibility and accountability, It believes that the 1997 resolution on Ministerial accountability, agreed by the House<sup>2</sup>, sets out the lines of Ministerial accountability, the terms of which are incorporated into the Ministerial Code. In addition, the Civil Service Code sets out civil servants' lines of accountability, which are that civil servants are accountable to Ministers, who in turn are accountable to Parliament.

**4. The civil service is responsible to ministers, but, as the role of Accounting Officer shows, that responsibility is complex, and not limited simply to implementing government policies. (Paragraph 34)**

The Government agrees with the Committee that the role of the Civil Service is not limited simply to implementing Government policies. As the Civil Service Code makes clear, the Civil Service supports the Government of the day in developing and implementing its policies, and in delivering public services. In addition, Accounting Officers have a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible. The various roles and responsibilities are set out in the respective Codes of Conduct for civil servants and ministers.

**5. We consider that the relationship between government and civil service, and civil service and Parliament, should be structured to ensure the ultimate accountability of the government to the electorate. The corollary of this is that elected ministers should have freedom to perform their functions as they see fit, within any framework set by Parliament. (Paragraph 41)**

The Government shares the Committee's view that elected politicians are accountable to the electorate. There is a clear democratic line of accountability which runs from the electorate through MPs to the Government of the day. The Government —whatever its political complexion—is supported by the Civil Service in developing and implementing its policies. Civil servants are accountable to Ministers, who in turn are accountable to Parliament. It is this line of accountability which makes clear that ultimately Ministers are accountable to the electorate. This line of accountability is set out in both the Ministerial Code and the Civil Service Code.

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<sup>2</sup> 19 March 1997 (*Official Report*, columns 1046-47)

**6. Comparisons with other countries are far from straightforward. Much depends on history and political culture. Nonetheless, in relation to ministerial accountability and politicisation of bureaucracy, it is useful to be reminded that the British system is extreme in the division it makes between the administrative and the political world, and that this division is, in some respects, increasing. This at least provides a context for a discussion which tends to be very parochial. (Paragraph 44)**

The Government agrees with the Committee that we are fortunate to have a Civil Service that is held in high regard, both at home and internationally. It also agrees with the Committee that we are fortunate to have a robust system of political accountability. Discussions about the relationship between Ministers and civil servants do not always acknowledge the positive relationship that exists between Ministers and civil servants. Ministers, civil servants and special advisers do not operate in silos, but work together in a constructive and effective manner to carry out the business of Government, respecting the requirements of their relevant Codes of Conduct.

**7. The purpose of civil service reform should be to ensure that the civil service is effective in carrying out its functions, and is responsive to the government of the day. A system in which the civil service was itself beyond political accountability would not be effective. (Paragraph 51)**

The Government shares the Committee's view that the purpose of Civil Service reform should be to ensure that the Civil Service is effective in carrying out its functions and that a system in which the Civil Service was itself beyond political accountability would not be effective.

In October 2005, the Cabinet Secretary announced to the Committee that one of his key priorities as Head of the Home Civil Service was to improve the capability of the Civil Service to meet today's delivery objectives and to be ready for the challenges of tomorrow. Since then, the major government departments have been subject to a programme of capability reviews that assess how well equipped departments are to meet these delivery challenges and provide targeted support to make any improvements required.

All reviews are published to ensure the process is open to scrutiny and comment. Following publication of the reviews, progress is driven forward by the Cabinet Secretary through a regular series of stock-takes with departmental boards which are augmented by regular one-to-one sessions with departmental Permanent Secretaries.

By assessing the capabilities required for future delivery of Government priorities, the review points to the areas where the Civil Service needs to improve. The next stage of the programme is to revisit each department 18–24 months after their original capability review. The three departments which have so far completed these reassessments (Home Office; Department for Children, Schools and Families; and, Department for Work and Pensions) have all shown improvements across the capability model.

**8. We consider that increasing the expectation that civil servants will account honestly to Parliament does not undermine the principle of ministerial responsibility, but strengthens accountability as a whole. (Paragraph 57)**

The new Civil Service Code published in June 2006, makes clear that civil servants are accountable to Ministers, who in turn are accountable to Parliament. It also makes clear

that civil servants are expected to carry out their role with a commitment to the Civil Service and its core values of integrity, honesty, objectivity and impartiality, and to always act in a way that is professional and that deserves and retains the confidence of all those with whom they have dealings—this includes Parliament.

In addition, both the Ministerial Code and the guidance in Departmental Evidence and Response to Select Committees (the Osmotherley Rules), make clear that Ministers have emphasised that, when officials represent them before Select Committees, they should be as forthcoming and helpful as they can in providing information relevant to Committee inquiries. As the Committee acknowledges, the Osmotherley Rules, which were revised in July 2005, also make clear that where a select committee wishes to take evidence from a particular named official the presumption will be that Ministers will agree to meet such a request. The Government believes that this demonstrates its commitment for civil servants to be honest and as helpful and open as possible with Parliament while at the same time not undermining the principle of ministerial accountability.

**9. Parliament has a legitimate interest in the quality of the governing process that provides it with its core business. It is essential to get the key governing relationship between ministers and civil servants on to a clearer footing. That is why we propose a new public service bargain, underpinned by a good governance code. (Paragraph 69)**

The Ministerial Code and the Civil Service Code set out the expectations and duties of Ministers and civil servants. The Committee suggests that what is lacking is a code for Ministers and civil servants. The Government does not believe that introducing an additional code is the most appropriate way forward in this area.

A new Civil Service Code was issued in June 2006, and the Prime Minister published a new Ministerial Code in July 2007. On appointment, Ministers and civil servants are made aware of their responsibilities under the respective codes. While there may be merit in individual departments supplementing the Ministerial Code and the Civil Service Code with a statement of the division of responsibilities between Ministers and their officials, this must be a decision for individual departments to take based on the circumstances of the department in question.

**10. We do not wish to return to a situation in which patronage prevails, either in the civil service itself or in other public service bodies. However, in the urge to avoid patronage, it is worth asking whether the balance between ministerial control and ministerial accountability is now struck in the right place. (Paragraph 74)**

The Government agrees that the controls and safeguards in place to ensure an open and transparent process and appointment on merit should not undermine the principle of Ministerial accountability or prevent Ministers from being properly involved in the process. The Commissioner for Public Appointments has recently consulted key stakeholders on the issue of Ministers' involvement in the public appointments process and is currently considering the outcome of this consultation in the context of the revision of her Code of Practice. The Government welcomes this work. The revised Code of Practice, which will deal with Ministerial involvement in public appointments among other subjects, will be the subject of further broader consultation by the Commissioner.

**11. Even though the British split between administration and politics is extreme, in international terms, and even though impartiality was first introduced as a means to improve administrative efficiency rather than simply to clean up the patronage state, we do not believe that wholesale introduction of appointments by politicians would necessarily solve the problems of civil service performance. Nor would it be consistent with our political culture. (Paragraph 78)**

We agree with the Committee's conclusion. The Government is committed to a permanent, impartial Civil Service with appointments made on merit on the basis of fair and open competition. This core principle is set out on the face of the draft Constitutional Renewal Bill. The draft Bill also sets out the limited exceptions to the policy of recruitment on merit through fair and open competition.

**12. Over the last two decades there has been an evolution in the common understanding of what degree of ministerial influence is appropriate over the employment of civil servants. The idea that the civil servant holds office at the minister's pleasure is no longer valid. We believe that there is a danger that ministerial influence over the civil service will be reduced to the extent that it is hard to reconcile with ministerial accountability. Ministerial accountability to Parliament is indissolubly linked to government responsibility to the electorate. (Paragraph 83)**

**13. It remains essential in our view that there should be no entrance into the civil service through ministerial patronage. Appointments should be made, as now, on merit, through a process which is rigorous, and which is policed by the Civil Service Commissioners. The ability to work impartially with governments of different political persuasions should be a key factor in deciding whether a particular candidate is appointable. (Paragraph 84)**

**14. Nonetheless, we need to ensure that changes in appointment systems, or in patterns of recruitment, do not have the perverse effect of reducing democratic accountability. It is possible to guard against patronage without removing all ministerial choice about suitable appointees. Such choice should be exercised only in cases where there is external recruitment to extremely senior posts. There should be no ministerial involvement in recruitment below the senior civil service, and even at senior civil service level it should be confined to key appointments. In such cases, if a competition produces more than a single candidate who would be suitable for the post on offer, we believe that it is entirely legitimate for ministers to be given an opportunity to meet them, and to be asked to express a preference, as is the case with appointments to NDPBs. (Paragraph 85)**

The recruitment process to the permanent civil service is rigorously overseen by the independent Civil Service Commissioners. The Commissioners' Recruitment Code recognises that Ministers will have an interest in certain appointments and provides for this to be accommodated within a system which selects on merit. The Government's proposals for legislation for the Civil Service set out in the draft Constitutional Renewal Bill, reinforces this approach by providing for the establishment of an independent statutory Civil Service Commission, and provides for the Commissioners to publish recruitment principles. At the heart of these will be the core principle of appointment on merit, on the basis of fair and open competition. This principle is also enshrined on the face of the Bill. The nature of ministerial involvement in external recruitment will also continue as now.

**15. The appointments process should take account of the fact that appointments are made to the civil service, as well as to a particular post. Assessment of external candidates should not focus too narrowly on the post in question. (Paragraph 86)**

We agree, and under current arrangements for the most senior appointments the selection process takes into account broader employability as well as suitability for a particular post by testing for overall skills using the framework provided by Professional Skills for Government. There are numerous examples of external appointments made at senior levels of the Civil Service where individuals have subsequently gone on to or been promoted to, other roles in the Service. But the priority should be that the candidate is tested against the specific skills important to the role in question.

**16. We believe the OCPA process should be a pragmatic solution to the need to ensure that political patronage is properly controlled, while allowing ministers the ability to set the direction of policy. We applaud the work that OCPA has done to clarify the rules, and ensure they are understood by all participants in the appointments process. (Paragraph 95)**

The Government echoes the Committee's appreciation of the work of OCPA. The forthcoming revision of the Commissioner's Code of Practice will provide a further opportunity to promote understanding of the rules and procedures governing the public appointments process.

**17. We recommend that, if ministerial accountability for appointments is to be a reality, ministers should be given clear descriptions of appointable candidates, rather than a ranking in merit order. Only then will ministers be able themselves to decide who is best fitted for a particular job. There may be cases where a minister is sufficiently confident of the job description to ask for a ranking in merit order, but that should be for the minister concerned to decide. (Paragraph 100)**

**20. In earlier reports previous committees have fully supported the principle of independent involvement in the appointments process, and have proposed measures to strengthen the system by ensuring the involvement of independent assessors at all stages of the process. We support those recommendations. Nonetheless, it is hard to reconcile ministers' ultimate responsibility for public appointments with limits on their involvement in the appointments process so stringent that they have no real choice over whom is appointed. We see no case for such "starred appointments". (Paragraph 106)**

The principle that ultimate responsibility for public appointments rests with Ministers remains paramount. As such, the Government agrees that Ministers must retain the right to choose between appointable candidates. This gives real weight to the principle of Ministerial accountability.

In relation to "starred" appointments, the Government notes that the Committee on Standards in Public Life made the recommendation that a small number of senior and strategic public appointments be classified as "starred" appointments. For these appointments, the Committee proposed that Ministers would be consulted throughout the process but that they should no longer have a choice between appointable candidates and that this decision should be taken by the recruitment panel. The Government agrees with the Committee that there is no case for "starred" appointments, and that it would

be hard to reconcile Ministers' ultimate responsibility for public appointments with such limits on their involvement in the appointments process.

**18. Different accountability processes are needed for different bodies. Not all appointments are suitable for Nolan procedures. Some of the current difficulties arise from a lack of transparency over what posts are or are not covered by the rules. In 2003 we recommended that NDPBs and similar bodies should be reviewed, so that there was clarity about which bodies were subject to the OCPA process. We are frustrated that this review has not yet been completed. (Paragraph 102)**

The Commissioner for Public Appointments' remit is clearly defined. Her remit extends to all Ministerial appointments to the boards of executive and advisory non-departmental public bodies (NDPBs), certain categories of NHS bodies, public corporations, public broadcasting authorities and certain utility regulators. The 2003 review did not change this. In total, the Commissioner regulates around 10,000 appointments to the boards of over 1,000 public bodies.

A list of the individual bodies which fall within the Commissioner's remit is set out in the Schedule to the Public Appointments Order in Council 2002. The Schedule was updated on 9 July 2008. The Government will work with the Commissioner for Public Appointments and individual Departments to ensure that the updated list of bodies is circulated widely and made available to all interested parties. The Government is committed to updating the Schedule on an annual basis to ensure clarity about which bodies fall within the Commissioner's remit. The Government is also committed to working with the Commissioner to look again at her jurisdiction to consider whether her remit should be extended to cover Ministerial appointments to other classes of public body.

**19. In addition, we believe that the Ministerial Code should make clear that not all ministerial appointments are made according to the OCPA rules. (Paragraph 102)**

The Ministerial Code, published in July 2007, makes it clear that not all Ministerial appointments are subject to regulation by the Commissioner for Public Appointments. The Ministerial Code states that public appointments should be made in accordance with the law and, where appropriate, the Code of Practice issued by the Commissioner for Public Appointments.

**21. We recommend that ministers should have a reserve power to make appointments to public bodies in specified cases without going through the normal Nolan processes, even when those posts would normally fall within the OCPA remit. Such cases should be transparent and explicit. The Commissioner for Public Appointments should report on every such case, making it clear that ministers had exercised this power, and, if appropriate, publishing the reason given for such an appointment. (Paragraph 108)**

**22. We do not believe that ministers would use this power frequently. A government which made numerous direct appointments would face intense scrutiny of them. However, if ministerial responsibility is to be a reality, it is reasonable for ministers to have such a power. (Paragraph 109)**

There is already flexibility under the Commissioner for Public Appointments' Code of Practice for Ministers to make appointments outside the normal processes—for

example, where a key position falls vacant at short notice, or where public bodies are being merged and there is a need for continuity of leadership. This seems the right approach. The Government does not consider there is a need for a new reserve power to allow Ministers to make appointments to regulated posts outside of the Commissioner's Code of Practice.

**23. The extent of the changes we propose should not be exaggerated. We consider that entry to the civil service should remain on merit, and that an independent body should continue to determine that merit. We suggest that the current procedures for making public appointments are generally appropriate. Although we do not support proposals to make them still more stringent, we suggest they should be relaxed only rarely, and that any departure from the normal rules should be transparent and explicit. (Paragraph 110)**

The Government welcomes the Committee's endorsement of selection procedure. Entry to the Civil Service remains on merit, and an independent body should continue to oversee the recruitment process. This important point of principle is enshrined in the provisions in the draft Constitutional Renewal Bill. The Civil Service Commissioners and the Commissioner for Public Appointments, as independent bodies, regularly produce annual reports in which they publicly express their views, ensuring the process remains open and fair.

**24. Special advisers are appointed by ministers directly; ministers need to take full responsibility for their conduct. (Paragraph 115)**

The Government agrees with the Committee that as special advisers are appointed by Ministers directly, Ministers need to take full responsibility for their conduct.

The Ministerial Code and Code of Conduct for Special Advisers are clear that the responsibility for the management and conduct of special advisers, including discipline, rests with the Minister who made the appointment.

**25. We remain neutral on whether a formal cabinet system would be a useful innovation. If proposed at some point, it would require careful and critical examination. This report has suggested a modest rebalancing of ministerial powers, in relation to appointments, in line with ministerial accountability. If this increases civil service effectiveness and responsiveness to ministers, it may reduce any pressure to introduce such a system, or to increase the number or powers of special advisers. (Paragraph 117)**

The Government agrees with the Committee that Civil Service effectiveness is key and that civil servants must be responsive to Ministers.

The Government believes that the current system of a permanent Civil Service working with Ministers and special advisers, maintains the impartiality of the Civil Service whilst ensuring that Ministers are accountable to Parliament and to the electorate.

**26. The Government's consultation on a draft Civil Service Bill closed on 28 February 2005. Its own guidelines state that a summary of responses and ensuing policy changes should be published within three months. Fifty responses is not an unusually high number to process. By any reckoning, that summary of responses should have been published a long time ago. We recommend that the Government**

**publishes that summary alongside its response to this report, within two months. Given the long delay, we would expect that summary of responses also to explain the delay. (Paragraph 137)**

**27. We need an Act which gives the civil service the institutional self-confidence to perform its constitutional role effectively, but also ensures that it is properly accountable. Just as we believe that government stewardship of the civil service should be subject to Parliamentary control, so we believe that the operations of the independent regulators should be brought within a framework of Parliamentary scrutiny and authorisation. (Paragraph 139)**

The Governance of Britain—Constitutional Renewal White Paper (Cm7342) published in March 2008, sets out the Government's proposals for Civil Service legislation. A summary of the responses to the Government's earlier proposals for a Civil Service Bill was also published at the same time.

The Government believes that the independent regulators already account to Parliament. They appear before Select Committees and their reports are published in Parliament. In addition, both the First Civil Service Commissioner and the Commissioner for Public Appointments have been identified as posts to be subject to pre-appointment Parliamentary scrutiny. The Government keeps the arrangements under review but believes that the current system provides for transparency and accountability.

August 2008

# List of Reports from the Committee during the current Parliament

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

## Session 2007–08

First Report	Machinery of Government Changes: A follow-up Report	HC 160 ( <i>HC 514</i> )
Second Report	Propriety and Peerages	HC 153 ( <i>Cm 7374</i> )
Third Report	Parliament and public appointments: Pre-appointment hearings by select committees	HC 152 ( <i>HC 515</i> )
Fourth Report	Work of the Committee in 2007	HC 236 ( <i>HC 458</i> )
Fifth Report	When Citizens Complain	HC 409 ( <i>HC 997</i> )
Sixth Report	User Involvement in Public Services	HC 410 ( <i>HC 998</i> )
Seventh Report	Investigating the Conduct of Ministers	HC 381 ( <i>HC 1056</i> )
Eighth Report	Machinery of Government Changes: Further Report	HC 514
Ninth Report	Parliamentary Commissions of Inquiry	HC 473 ( <i>HC 1060</i> )
Tenth Report	Constitutional Renewal: Draft Bill and White Paper	HC 499
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Twelfth Report	From Citizen's Charter to Public Service Guarantees: Entitlement to Public Services	HC 411
Thirteenth Report	Selection of a new Chair of the House of Lords Appointments Commission	HC 985
Fourteenth Report	Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants	HC 664

## Session 2006–07

First Report	The Work of the Committee in 2005–06	HC 258
Second Report	Governing the Future	HC 123 ( <i>Cm 7154</i> )
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122 ( <i>HC 1057 Session 2007–08</i> )
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 ( <i>HC 88 Session 2007–08</i> )
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 ( <i>HC 922</i> )
Sixth Report	The Business Appointment Rules	HC 651 ( <i>HC 1087</i> )
Seventh Report	Machinery of Government Changes	HC 672 ( <i>HC 90 Session 2007–08</i> )
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006–07	HC 922 ( <i>HC 1048</i> )
Ninth Report	Skills for Government	HC 93 ( <i>HC 89</i> )
First Special Report	The Governance of Britain	HC 901

**Session 2005–06**

First Report	A Debt of Honour	HC 735 (Cm 1020)
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 ( <i>Cm 7374</i> )
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 ( <i>HC 91, Session 2007–08</i> )