

Executive Powers and Civil Service Bill [HL]

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Place under the authority of Parliament executive powers exercisable by Ministers of the Crown by virtue of the Royal prerogative; to make provision relating to the appointment and conduct of, and general duties relating to, civil servants and special advisers; to establish a procedure for the making of certain public appointments; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

PARLIAMENTARY AUTHORITY FOR EXECUTIVE POWERS

1 Meaning of “executive powers”

In this Act “executive powers” means rights and powers under Her Majesty’s prerogative, but does not include—

- (a) any rights and powers that belong to Her Majesty in her personal capacity or to any member of the Royal Family; or
- (b) any rights and powers which belong to Her Majesty in right of the Crown or the Duchy of Lancaster, or to the Duchy of Cornwall, and which are necessary to allow Her Majesty to continue to act as The Queen in Council or as Head of State.

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2 Executive powers to be exercisable under authority of Parliament

- (1) With effect from the end of the relevant period, no executive powers may be exercised unless Parliament has provided appropriate authority.
- (2) But nothing in this section affects—
 - (a) any method or procedure in use before the passing of this Act with a view to exercising executive powers; or

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- (b) the continuing validity, operation or enforcement of any Orders in Council made under Her Majesty’s prerogative before the end of the relevant period.
- (3) “Relevant period” means the period of 9 months commencing with the passing of this Act. 5

3 Appropriate parliamentary authority for executive powers

- (1) In respect of any particular exercise of executive powers, the general rule is that appropriate parliamentary authority shall be regarded as provided by virtue of this subsection.
- (2) But the general rule does not apply – 10
- (a) in any case falling within subsection (3);
 - (b) in any case to which subsection (4) applies, unless the requirements of Schedule 1 are met; and
 - (c) to the extent that, following a review by the Executive Powers Review Committee under section 4, anything done in exercise of executive powers ceases to be lawful by virtue of any provision of Schedule 2. 15
- (3) Appropriate parliamentary authority is not to be regarded as provided for any step taken, or proposed to be taken, in exercise of executive powers in any case where that step, or the result to be achieved by it, could be taken or achieved by virtue of any provision contained in any primary or secondary legislation, whenever enacted (including any provision in Part 2 or 3 of this Act). 20
- (4) This subsection –
- (a) applies to circumstances in which –
 - (i) a treaty to which the United Kingdom is a party is to be ratified; or 25
 - (ii) it is proposed to commit the United Kingdom to direct participation in any war, international armed conflict or international peace-keeping activity; but
 - (b) does not apply to such circumstances in any case where the Prime Minister –
 - (i) considers that exceptional considerations require immediate action to be taken;
 - (ii) notifies each House of Parliament accordingly; and
 - (iii) as soon as reasonably practicable, provides each House with a statement of his reasons for taking the view referred to in subparagraph (i). 30
- (5) In this section –
- (a) “treaty” means an international agreement, however designated, that –
 - (i) is concluded between States, or between States and intergovernmental organisations; 40
 - (ii) takes written form;
 - (iii) is governed by international law; and
 - (iv) contains provision (however expressed) that the parties intend to show consent to the treaty by ratifying it; and
 - (b) references to ratify, in relation to a treaty, are to the international act whereby a State indicates its consent to be bound by the treaty. 45

4 Executive Powers Review Committee

- (1) There shall be a Committee to be known as the “Executive Powers Review Committee”.
- (2) It shall be the duty of the Executive Powers Review Committee to keep under general review, and report to Parliament on, circumstances in which executive powers are exercised. 5
- (3) Schedule 2 makes provision in connection with the Executive Powers Review Committee and its reviews and reports.

PART 2

THE CIVIL SERVICE AND SPECIAL ADVISERS 10

Interpretation

5 Interpretation of this Part

In this Part—

“civil servant” means any individual who is a permanent, short-term or seconded member of the Civil Service who is vested with public functions to assist Her Majesty’s Government in the United Kingdom, the Scottish Executive or the National Assembly for Wales in the formulation of policies, the carrying out of decisions and the provision of public services; 15

“Civil Service” means— 20

- (a) Her Majesty’s Home Civil Service;
- (b) Her Majesty’s Diplomatic Service;
- (c) the Security Service;
- (d) the Secret Intelligence Service; and
- (e) the Government Communications Headquarters within the meaning of the Intelligence Services Act 1994 (c. 13); 25

“Civil Service Code” has the meaning given in section 13(1)(a);

“Civil Service Commission” means the Civil Service Commission for England, Wales and Scotland;

“Recruitment Code” means the Recruitment Code for the Civil Service published and maintained in accordance with section 8; 30

“Special Advisers’ Code” has the meaning given in section 13(1)(b); and

“special adviser” means an individual appointed personally by a Minister of the Crown (whether in a paid or unpaid capacity) to provide advice and assistance informed by views of the political party of which that Minister is a member. 35

Appointments to the Civil Service

6 Appointments to the Civil Service

- (1) No person may be appointed as a civil servant unless the first and second conditions are met in relation to him. 40
- (2) The first condition is that a person who is appointed to any post—

-
- (a) is selected for appointment on merit on the basis of fair and open competition; or
- (b) falls within an exception to paragraph (a) that is contained in the Recruitment Code for the Civil Service published by the Civil Service Commission under section 8(1)(b). 5
- (3) The second condition is that a person who is appointed to any post satisfies all the requirements having effect in relation to that appointment which are specified in regulations made by the Minister for the Civil Service.
- (4) Regulations under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 10
- 7 The Civil Service Commission**
- (1) There shall be a body corporate to be known as ‘the Civil Service Commission for England, Wales and Scotland’ (but referred to in this Part as ‘the Civil Service Commission’).
- (2) The Civil Service Commission shall consist of the First Commissioner and not less than six nor more than twelve other Commissioners. 15
- (3) The Commissioners shall be appointed by Her Majesty upon the recommendation of the Minister for the Civil Service.
- (4) In relation to any person to be appointed as the First Civil Service Commissioner, the Minister for the Civil Service shall, before making a recommendation under subsection (3), consult with the leader of each qualifying political party. 20
- (5) ‘Qualifying political party’ means any registered political party to which, for the time being –
- (a) two or more members of the House of Commons belong; 25
- (b) two or more members of the Scottish Parliament belong;
- (c) two or more members of the National Assembly for Wales belong.
- (6) Schedule 3 makes provision about the constitution and status of the Commission.
- 8 Duties of the Civil Service Commission** 30
- (1) It shall be the duty of the Civil Service Commission –
- (a) to ensure that appointments to the Civil Service are made in accordance with section 6;
- (b) to publish and maintain the Recruitment Code for the Civil Service (‘the Recruitment Code’); 35
- (c) to approve the appointment of senior officials in accordance with the Recruitment Code;
- (d) to audit the recruitment systems of government departments and agencies for compliance with the Recruitment Code;
- (e) to audit, and periodically report on, the operation of the Civil Service Code issued under section 13(1)(a); 40
- (f) to hear and determine any appeals made to it in accordance with that Code; and
- (g) to carry out any other functions conferred on it by this Part.

- (2) The Recruitment Code is a code –
- (a) relating to the interpretation and application of any conditions specified by, or by virtue of, section 6;
 - (b) specifying exceptions to those conditions in such circumstances as the Commission thinks fit; 5
 - (c) relating to the interpretation and application of exceptions specified under paragraph (b); and
 - (d) containing such other provision as to recruitment to the Civil Service as the Commission thinks fit.
- (3) In this section – 10
- “audit” means any review carried out by or on behalf of the Civil Service Commission; and
 - “senior official” means a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty’s Diplomatic Service. 15

9 General duty of persons making Civil Service appointments

In making any appointment to the Civil Service, it shall be the duty of the person making the appointment to comply with the Recruitment Code.

Impartiality of the Civil Service and Civil Service Commission

10 Duties of Ministers and special advisers to uphold impartiality 20

- (1) It shall be the duty of –
- (a) each Minister of the Crown; and
 - (b) each special adviser;
- to uphold the integrity and impartiality of the Civil Service.
- (2) It shall be the duty of each Minister of the Crown to uphold the independence and impartiality of the Civil Service Commission. 25

Civil servants and special advisers

11 Civil servants and special advisers: duties and restrictions

- (1) It shall be the duty of each civil servant at all times to act with honesty, integrity, impartiality and objectivity. 30
- (2) It shall be the duty of each special adviser at all times to act with honesty and integrity, and in accordance with his terms of service.
- (3) No special adviser may exercise executive powers.

12 Information relating to special advisers

- (1) At least once a year the Prime Minister shall lay before each House of Parliament a general report on the appointment, role and responsibilities of special advisers. 35
- (2) A report under subsection (1) shall state –

- (a) the total number of paid advisers in post during the year;
- (b) their names;
- (c) the Minister of the Crown responsible for their appointment;
- (d) their roles and areas of responsibility;
- (e) any other Minister of the Crown to whom they have provided assistance during the year and the nature of it; 5
- (f) the total salary cost by government department; and
- (g) all available comparison figures for a minimum period of ten years immediately preceding the year to which the report relates.

Codes of conduct 10

13 Codes of conduct for civil servants and special advisers

- (1) The Minister for the Civil Service shall prepare, issue and maintain—
 - (a) a code of conduct for civil servants (“the Civil Service Code”); and
 - (b) a code of conduct for special advisers (“the Special Advisers’ Code”).
- (2) Each Code shall set out — 15
 - (a) the constitutional framework of responsibilities within which civil servants and special advisers are to work; and
 - (b) the values they are expected to uphold.
- (3) Each civil servant shall comply with the Civil Service Code.
- (4) Each special adviser shall comply with the Special Advisers’ Code. 20

14 Codes of conduct: procedure

- (1) This section applies in any case where the Minister for the Civil Service proposes—
 - (a) to issue a new Civil Service Code or the Special Advisers’ Code; or
 - (b) to make an amendment to either Code. 25
- (2) The Minister for Civil Service shall—
 - (a) seek preliminary views on the proposal from the Civil Service Commission;
 - (b) publish a draft of the proposal, together with—
 - (i) an explanation of its purpose; 30
 - (ii) an explanation of the Minister’s reasons for believing that issuing or amending the code in accordance with the proposal is compatible with the duties imposed by sections 10 and 11; and
 - (iii) notice that representations about the proposals may be made to him within a specified time; and 35
 - (c) lay a draft of the proposal before each House of Parliament.
- (3) Before issuing the proposed code or making the proposed amendment, the Minister shall have regard to any representations made by the Civil Service Commission or any other person in accordance with subsection (2)(b)(iii). 40
- (4) If the Minister issues the proposed code or makes the proposed amendment, he shall publish an account, in general terms, of—

- (a) the representations made to him in accordance with subsection (2)(b)(iii); and
 - (b) his response to them.
- (5) The Civil Service Code and the Special Advisers' Code, or any amendment to either of them, shall be issued by order. 5
- (6) An order under subsection (5) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Investigations by the Civil Service Commission

15 Power to investigate contraventions relating to the Civil Service

- (1) Subsection (2) applies if it appears to the Civil Service Commission that there are circumstances suggesting that – 10
 - (a) an appointment to the Civil Service may have been made in contravention of any provision made by, or by virtue of, this Part; or
 - (b) a person may have contravened any provision of the Civil Service Code. 15
- (2) The Civil Service Commission may conduct such investigations as it thinks fit.
- (3) An investigation under subsection (2) may be conducted either –
 - (a) in response to a reference to the Commission of any matter in accordance with the Civil Service Code; or
 - (b) on the Commission's own initiative. 20

16 Investigation procedure

- (1) If the Civil Service Commission proposes to conduct an investigation under section 15, it shall give to every person whose affairs it intends to investigate notice of the proposal.
- (2) A notice under subsection (1) shall set out the scope and purpose of the investigation. 25
- (3) The Commission shall invite every person to whom a notice under subsection (1) is given to comment on the matters to which the proposed investigation relates.
- (4) If the Commission decides to conduct the investigation, it shall invite every person whose affairs are to be investigated to make oral or written representations to it on the matters under consideration. 30
- (5) The Commission may make such inquiries and call for such reports as it thinks fit, including reports by officers of the Commission or inquiries or interviews conducted by them on the Commission's behalf. 35
- (6) The Commission may by notice in writing require any person who is the subject of the investigation, or any other person who in the opinion of the Commission is able to provide information or produce documents relevant to it –
 - (a) to provide specified information or information of a specified description; 40

- (b) to produce specified documents or documents of a specified description;
 - (c) to attend at a specified time and place to answer questions.
- (7) Investigations are to be conducted in private.
- (8) Apart from the provision made in subsections (1) to (7), the Commission may determine its own procedure for conducting investigations. 5

PART 3

PUBLIC APPOINTMENTS

17 Procedure for making specified public appointments

- No person may be appointed to a specified public appointment unless – 10
- (a) the person making the appointment has first obtained, and considered, the advice of the Commissioner for Public Appointments; and
 - (b) the appointment of the person selected for the position has been approved by the Public Appointments Committee.

18 Specified public appointments

- (1) In this Part “specified public appointment” means any appointment as – 15
- (a) the Information Commissioner;
 - (b) a Commissioner at the Equal Opportunities Commission;
 - (c) a Commissioner at the Commission for Racial Equality;
 - (d) a Commissioner at the Disability Rights Commission; 20
 - (e) the Comptroller and Auditor General;
 - (f) the Parliamentary Commissioner for Administration;
 - (g) the Welsh Administration Ombudsman;
 - (h) a Local Government Ombudsman for England;
 - (i) the Local Government Ombudsman for Wales; 25
 - (j) the Health Service Ombudsman for England and Wales;
 - (k) the Chairman of the Financial Ombudsman Service;
 - (l) the Chairman of the Independent Police Complaints Commission or a member of that Commission;
 - (m) the Legal Services Ombudsman for England and Wales; 30
 - (n) the Pensions Ombudsman.
- (2) The Secretary of State may by order amend the list of specified public appointments by varying, or removing, any of them or by adding an appointment.
- (3) An order under subsection (2) – 35
- (a) may not be made unless the Secretary of State has first obtained, and considered, the advice of the Public Appointments Committee; and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) “Financial Ombudsman Service” means the body corporate established to administer the ombudsman scheme for which Part 16 of the Financial Services and Markets Act 2000 (c. 8) makes provision. 40

19 Commissioner for Public Appointments

- (1) There shall be established the office of the Commissioner for Public Appointments.
- (2) It shall be the duty of the Commissioner for Public Appointments to advise –
 - (a) the Public Appointments Committee on specified public appointments; 5
 - and
 - (b) any person making such an appointment.
- (3) Schedule 4 makes provision about the office of the Commissioner for Public Appointments.

20 Public Appointments Committee 10

- (1) There shall be a Committee to be known as “the Public Appointments Committee”.
- (2) It shall be the duty of the Public Appointments Committee to approve nominations for any specified public appointment.
- (3) Schedule 5 makes provision about the Public Appointments Committee. 15

PART 4

SUPPLEMENTAL

21 Interpretation

In this Act –

- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26); 20
- “primary legislation” and “secondary legislation” have the same meaning as in the Human Rights Act 1998 (c. 42); and
- “registered political party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41). 25

22 Regulations, orders and revocation

- (1) Any power to make an order or regulations which is conferred by this Act is exercisable by statutory instrument.
- (2) Any statutory instrument made under this Act may –
 - (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; and 30
 - (b) make different provision for different cases.

23 Short title, commencement and extent

- (1) This Act may be cited as the Executive Powers and Civil Service Act 2004.
- (2) Part 1 comes into force on the day on which this Act is passed. 35
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

- (4) This Act extends to Great Britain and Northern Ireland except that—
- (a) nothing in Part 2 applies in relation to the Northern Ireland Civil Service; and
 - (b) the provisions of Part 3 have the same extent, in their application to any specified public appointment (within the meaning of section 18) which is made under an enactment, as that enactment.

SCHEDULES

SCHEDULE 1

Section 3(2)(b)

PARLIAMENTARY AUTHORITY FOR TREATIES AND WAR ETC

Ratification of treaties

- 1 (1) The Minister of the Crown with lead responsibility for negotiating any treaty shall, once the treaty has been signed, lay a copy of it before Parliament. 5
- (2) The treaty shall be accompanied by –
 - (a) an explanation of the contents and the purpose of the treaty;
 - (b) an explanation of the reasons for believing that entering into the treaty is in the interests of the United Kingdom and its inhabitants; 10
 - and
 - (c) an estimate of the costs together with an analysis of the benefits that will arise if the treaty is ratified.
- 2 (1) Any treaty specified in sub-paragraph (2) may be ratified only if it is approved by a resolution of each House of Parliament. 15
- (2) The treaties specified in this sub-paragraph are –
 - (a) any treaty that requires any amendment to be made to the laws of the United Kingdom;
 - (b) any treaty that affects the private rights of any individuals, bodies corporate, partnerships or unincorporated associations in the United Kingdom; 20
 - (c) any treaty that imposes or increases a tax on any such person;
 - (d) any treaty that cedes any part of the territory of the United Kingdom; and
 - (e) such other description of treaty as the Secretary of State may specify by order. 25
- (3) An order under sub-paragraph (2)(e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The reference to territory of the United Kingdom includes the Channel Islands, the Isle of Man and any colony. 30
- 3 (1) Any treaty other than one falling within paragraph 2(2) may be ratified only if –
 - (a) it has been reported to Parliament by a Select Committee; and
 - (b) before the end of the relevant period, neither House has passed a resolution praying against ratification. 35
- (2) “Relevant period” means a period of twenty-one days beginning with the day on which the treaty is laid before Parliament.

- (3) In calculating the relevant period no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

Participation in war, armed conflict or peacekeeping

- 4 Before executive powers are exercised for the purpose of committing the United Kingdom to direct participation in— 5
- (a) any war;
 - (b) any international armed conflict; or
 - (c) any international peace-keeping activities;
- the prior approval of Parliament for such participation must be given by a resolution of each House. 10

SCHEDULE 2

Section 4

EXECUTIVE POWERS REVIEW COMMITTEE

Preliminary

- 1 In this Part of this Schedule “executive action” means any Order in Council made under executive powers or anything done in exercise of such powers. 15

Appointment of Executive Powers Review Committee

- 2 (1) The Executive Powers Review Committee (referred to in this Schedule as “the Committee”) shall consist of twelve members— 20
- (a) who shall be drawn from the members of the House of Commons and from the members of the House of Lords; and
 - (b) none of whom shall be a Minister of the Crown.
- (2) The members of the Committee shall be appointed by the Prime Minister and one of the members shall be appointed by him as chairman.
- (3) An appointment under sub-paragraph (2) may only be made after consultation with the leader of each registered political party to which two or more members of the House of Commons for the time being belong. 25
- (4) Past service is no bar to appointment as a member of the Committee.

Tenure of office

- 3 (1) A member of the Committee shall hold office for the duration of the Parliament in which he is appointed. 30
- (2) But a member shall vacate office—
- (a) if he ceases to be a member of the House of Commons
 - (b) if he ceases to be a member of the House of Lords;
 - (c) if he becomes a Minister of the Crown; or
 - (d) if he is required to do so by the Prime Minister on the appointment, in accordance with this Schedule, of another person as a member in his place. 35

- (3) A member of the Committee may resign at any time by giving notice to the Prime Minister.

Procedure

- 4 (1) The quorum of the Committee is three.
- (2) The Chairman may appoint one of the members of the Committee to act, in his absence, as chairman at any meeting of the Committee. 5
- (3) If, on any matter, there is an equality of voting among the members of the Committee, the Chairman shall have a second or casting vote.
- 5 Apart from the provision made in paragraph 4, the Committee may determine its own procedure. 10

Terms of reference

- 6 (1) In its general review under section 4(2) of the circumstances in which executive powers are exercised, the Committee shall consider the extent to which the Government has observed the general principle, having regard to – 15
- (a) the nature and effect of the executive action;
 - (b) the rights and interest of any person affected; and
 - (c) any other factors that the Committee considers appropriate.
- (2) The general principle is that any executive action should only be taken in such manner as will provide an adequate level of accessibility, clarity and legal certainty for persons affected by it. 20

Report to Parliament

- 7 At least once a year the Committee shall lay before Parliament a report on –
- (a) its consideration, in relation to any executive action, of the matters mentioned in paragraph 6; 25
 - (b) any circumstances in which it considers that anything done, or proposed to be done, in the course of executive action is of such nature or significance that it ought to be considered by Parliament and authorised by primary or secondary legislation;
 - (c) in a case falling within paragraph (b), the Committee’s reasons for reaching its view; 30
 - (d) such other matters as it may determine.

Duty of Minister to respond in certain cases

- 8 (1) This paragraph applies in any case where –
- (a) a report by the Committee includes, in relation to any executive action, material which falls within paragraph 7(b); and 35
 - (b) both Houses of Parliament approve the report in so far as it relates to that action.
- (2) The Minister (or Ministers) of the Crown with responsibility for the executive action shall either – 40
- (a) bring before Parliament –

- (i) primary legislation containing provision to authorise that executive action; or
- (ii) secondary legislation containing such provision (either under existing powers or paragraph 9); or
- (b) lay before Parliament a statement of his reasons for not doing so. 5
- (3) Any legislation falling within sub-paragraph (2)(a) shall contain a statement indicating that it is in response to a report under paragraph 7, specifying the date of the report.
- 9 (1) If a Minister of the Crown considers that it is appropriate to do so, he may by order under this paragraph make provisions for the purposes of paragraph 8(2)(a)(ii) to authorise particular executive action. 10
- (2) No order shall be made under this paragraph unless a draft of the order has been laid before Parliament and approved by resolution of each House.

Executive action unlawful in certain cases

- 10 (1) In any case to which paragraph 8(1) applies, anything done in the course of the executive action in question shall cease to be lawful with effect from the end of the relevant period unless, before the end of that period, the first condition or the second condition is met in relation to the executive action. 15
- (2) The first condition is that legislation falling within paragraph 8(2)(a) is enacted by Parliament. 20
- (3) The second condition is that a statement of reasons laid under paragraph 8(2)(b) is approved by resolution of each House of Parliament.
- (4) “Relevant period” means the period of 18 months commencing with the date on which the approval of both Houses of Parliament was given to the report relating to the executive action. 25

SCHEDULE 3

Section 7

CIVIL SERVICE COMMISSION FOR ENGLAND, WALES AND SCOTLAND

The Commissioners

- 1 (1) Any Commissioner appointed to the Civil Service Commission for England, Wales and Scotland (referred to in this Schedule as “the Commission”) shall hold and vacate office in accordance with the terms of his appointment. 30
- (2) The First Commissioner of the Civil Service Commission shall cease to hold that office if he ceases to be a Commissioner.
- (3) No person may be appointed as a Commissioner for a term exceeding five years. 35
- (4) But a person who ceases to be a Commissioner is eligible for re-appointment.
- (5) A Commissioner may resign by giving notice to the Minister for the Civil Service.
- (6) The Minister for the Civil Service may remove a commissioner from office by giving notice to him if the Minister is satisfied – 40

	(a) that the Commissioner has without reasonable excuse failed to discharge his functions for a continuous period of three months (beginning not earlier than six months before the day of dismissal);		
	(b) that he has been convicted of a criminal offence;		
	(c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or has granted a trust deed for, his creditors; or	5	
	(d) that he is unable or unfit to carry out his functions.		
2	The Minister for the Civil Service may pay to or in respect of the Commissioners such remuneration, expenses and sums for the provision of pensions as he may determine.	10	
<i>Staff</i>			
3	(1) The commission may, with the approval of the Minister for the Civil Service as to numbers and terms and conditions of service –		
	(a) appoint such staff as it considers necessary;	15	
	(b) use the services of such other persons as the Commission considers expedient for any particular purpose.		
	(2) The Commission may make arrangements for the payment of such pensions, allowances or gratuities, or the maintenance of such pension schemes, to or in respect of such staff as it may determine.	20	
	(3) No determination may be made under sub-paragraph (2) without the approval of the Minister for the Civil Service.		
<i>Procedure</i>			
4	(1) The Commission may regulate its own procedure.		
	(2) In determining its own procedure the Commission may, in particular, make provision about –	25	
	(a) the discharge of its functions by committees (which may include persons who are not Commissioners);		
	(b) a quorum for meetings of the Commission or of committees.		
5	The validity of any proceedings of the Commission is not affected by any vacancy among the Commissioners or by a defect in the appointment of a commissioner.	30	
6	(1) The application of the seal of the Commission shall be authenticated by the signature of –		
	(a) any Commissioner; or	35	
	(b) some other person who has been authorised for that purpose by the Commission (whether generally or specifically).		
	(2) Sub-paragraph (1) does not apply in relation to any document that is, or is to be, signed in accordance with the law of Scotland.		
<i>The Commission's powers</i>			40
7	The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.		

Accounts

- 8 (1) The Commission shall –
- (a) keep proper accounts;
 - (b) prepare a statement of accounts in respect of each of its financial years; and 5
 - (c) send copies of the statement to the Minister for the Civil Service and the Comptroller and Auditor General before the end of August following the financial year to which they relate.
- (2) The Comptroller and Auditor General shall –
- (a) examine, certify and report on each statement of accounts received by him; and 10
 - (b) lay copies of each statement before Parliament.
- (3) “Financial year” means the period of 12 months ending with 31st March.

Reports

- 9 (1) At least once a year, the Commission shall lay before each House of Parliament a report on – 15
- (a) the performance of its functions during the year; and
 - (b) such other matters as the Minister for the Civil Service may from time to time direct.
- (2) The report shall (among other things) give details of how the Commission’s resources have been allocated. 20
- (3) The Commission may from time to time lay before each House of Parliament such reports with regards to its other function as it thinks fit.

Disqualification for membership of the House of Commons

- 10 In Part 11 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (offices disqualifying for membership of the House of Commons), insert at the appropriate place – 25
- “The Civil Service Commission for England, Wales and Scotland appointed under section 7 of the Executive Powers and Civil Service Act 2004.” 30

Disqualification for membership of Northern Ireland Assembly

- 11 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (disqualifying offices), insert at the appropriate place –
- “The Civil Service Commission for England, Wales and Scotland appointed under section 7 of the Executive Powers and Civil Service Act 2004.” 35

Status

- 12 In relation to any of its functions –
- (a) the Commission is not to be regarded as acting on behalf of the Crown; and 40

- (b) the Commissioners, officers and staff are not to be regarded as Crown servants.

SCHEDULE 4

Section 19

COMMISSIONER FOR PUBLIC APPOINTMENTS

<i>Appointment</i>	5
1 (1) The Commissioner for Public Appointments shall be appointed by Her Majesty upon the recommendation of the Prime Minister.	
(2) No recommendation may be made under sub-paragraph (1) unless it has been approved by the Public Appointments Committee.	
2 No person may be appointed to, or hold office as, the Commissioner for Public Appointments (referred to in this Schedule as “the Commissioner”) if that person is –	10
(a) a member of the House of Lords and entitled to vote in the House;	
(b) a member of the House of Commons;	
(c) a member of the Scottish Parliament;	15
(d) a member of the National Assembly for Wales;	
(e) a member of the Northern Ireland Assembly;	
(f) the holder of a specified public appointment;	
(g) an officer of, or other person for the time being engaged to provide services to, any body to which the holder of a specified public appointment is appointed;	20
(h) disqualified from election as a member of the House of Commons, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly; or	
(i) disqualified from election as a member of a local authority.	25
<i>Tenure of office</i>	
3 (1) The Commissioner shall hold and vacate office in accordance with the terms and conditions determined by the Prime Minister.	
(2) No person may be appointed as the Commissioner for a term exceeding five years.	30
(3) But a person who ceases to be the Commissioner is eligible for reappointment, provided that –	
(a) no person may be appointed as Commissioner for more than three terms of office; and	
(b) a person may be appointed for a third period of office only if, by reason of special circumstances, such appointment is desirable in the public interest.	35
(4) The Commissioner may resign by giving notice to the Prime Minister.	
(5) The Commissioner may be removed from office by Her Majesty in pursuance of a resolution of both Houses of Parliament.	40

Independence

- 4 (1) In the exercise of the functions of office, the Commissioner for Public Appointments is not subject to the direction or control of any Member of Parliament.
- (2) But nothing in this paragraph affects paragraph 3. 5

Remuneration etc

- 5 (1) The Prime Minister may pay to or in respect of the Commissioner such remuneration and expenses as the Prime Minister may determine.
- (2) The Prime Minister may make arrangements for the payment of pensions, allowances or gratuities to, or the maintenance of, such pension schemes to or in respect of any person who has ceased to hold office as Commissioner. 10

Vacancy in office

- 6 (1) Where the office of the Commissioner is vacant, the Prime Minister may appoint a person to discharge the functions of the office until a new commissioner is appointed under section 19. 15
- (2) A person appointed under sub-paragraph (1) is referred to in this Schedule as “the Acting Commissioner”.
- (3) The Acting Commissioner –
- (a) may be a member of the staff of, or a person appointed as assessor by, any previous holder of the office of Commissioner; but 20
- (b) may not be a person disqualified from appointment as Commissioner by virtue of paragraph 2.
- 7 (1) The Acting Commissioner may hold and vacate office in accordance with the terms and conditions determined by the Prime Minister.
- (2) The Acting Commissioner may resign by giving notice to the Prime Minister. 25
- (3) The Acting Commissioner may be removed from office by the Prime Minister by notice in writing given by him.
- (4) Whilst the Acting Commissioner is holding office, the provisions of this Schedule, apart from paragraphs 3 and 5, apply to him as they apply to the Commissioner. 30

Staff

- 8 (1) The Commissioner may, with the approval of the Prime Minister as to numbers and terms and conditions of service –
- (a) appoint such staff as he considers necessary; and 35
- (b) use the services of such other persons as he considers expedient for any particular purpose.
- (2) The Commissioner may make arrangements for the payment of such pensions, allowances or gratuities, or the maintenance of such pension schemes, to or in respect of such staff as he may determine. 40
- (3) No determination may be made under sub-paragraph (2) without the approval of the Prime Minister.

Assessors

- 9 (1) The Commissioner may appoint assessors to assist him in the exercise of his functions.
- (2) The Commissioner may, with the approval of the Prime Minister, pay to any assessor such fees and allowances as the Commissioner may determine. 5

Procedure

- 10 The validity of anything done by the Commissioner, or by the Acting Commissioner, is not affected by –
- (a) any defect in his nomination by the Prime Minister; or
- (b) any disqualification from appointment by virtue of paragraph 2. 10

Powers

- 11 (1) The Commissioner may do anything which appears to him necessary or expedient for the purpose of or in connection with the exercise of the functions of that office.
- (2) In particular, the Commissioner may – 15
- (a) acquire and dispose of land and other property; and
- (b) enter into contracts.

Delegation

- 12 (1) Any function of the Commissioner may be exercised on his behalf – 20
- (a) by any person authorised by him to do so; and
- (b) to the extent so authorised.
- (2) A person to whom a function is delegated under sub-paragraph (1) may be a member of the Commissioner’s staff or a person appointed as assessor by the Commissioner.
- (3) Sub-paragraph (1) does not affect the responsibility of the Commissioner for the exercise of his functions. 25

Financial provision

- 13 Any expenses incurred in accordance with this Schedule are to be paid out of money provided by Parliament.

Accountable officer

- 14 (1) Parliament shall designate the Commissioner or a member of his staff as the accountable officer for the purposes of this paragraph. 30
- (2) The functions of the accountable officer are –
- (a) the functions specified in sub-paragraph (3); and
- (b) the additional duty specified in sub-paragraph (4) in any case where the accountable officer is not the Commissioner and is required to act in a particular way that he considers would be inconsistent with the proper performance of the functions specified in sub-paragraph (3). 35
- (3) The function referred to in sub-paragraph (2)(a) are –

- (a) signing the accounts of the expenditure and receipts of the Commissioner;
 - (b) ensuring the propriety and regularity of the finances of the Commissioner; and
 - (c) ensuring that the resources of the Commissioner are used economically, efficiently and effectively. 5
- (4) In any case falling within sub-paragraph (2)(b), the accountable officer shall—
- (a) obtain written authority from the Commissioner before taking the action; and 10
 - (b) send a copy of that authority as soon as practicable to the Comptroller and Auditor General.
- (5) The accountable officer is answerable to Parliament for the exercise of his functions under this paragraph.

Accounts and reports 15

- 15 (1) The Commissioner shall—
- (a) keep proper accounts and accounting records; and
 - (b) prepare an annual account in respect of each financial year (the financial year being the period of 12 months ending with 31st March), in accordance with such directions as the Secretaries of State may give. 20
- (2) The Commissioner shall send the annual account to the Comptroller and Auditor General for auditing.
- (3) If requested by any person, the Commissioner shall make the audited accounts available, in printed or in electronic form, for inspection by that person at any reasonable time and without charge. 25
- (4) At least once a year the Commissioner shall lay before Parliament a report on the exercise of the functions of his office.
- (5) A report under sub-paragraph (4) shall include—
- (a) information as to the application by appointing authorities of the principle of appointment on merit and as to the observance by such authorities of the code of practice; and 30
 - (b) an account of the audit of appointment procedures and practices.
- (6) The Public Appointments Commissioner shall comply with any direction as to the form and content of reports as Parliament may give. 35

Status

- 16 (1) The Commissioner, his staff and any assessors appointed by him—
- (a) are not to be regarded as acting on behalf of the Crown or as Crown servants; and
 - (b) do not have any status, immunity or privilege of the Crown. 40
- (2) The Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown.

SCHEDULE 5

Section 20

PUBLIC APPOINTMENTS COMMITTEE

Appointment

- 1 (1) The Public Appointments Committee (referred to in this Schedule as “the Committee” shall consist of nine members – 5
 - (a) who shall be drawn from the members of the House of Commons; and
 - (b) none of whom shall be a Minister of the Crown.
- (2) The members of the Committee shall be appointed by the Prime Minister and one of the members shall be appointed by him as chairman. 10
- (3) An appointment under sub-paragraph (2) may only be made after consultation with the leader of each registered political party to which two or more members of the House of Commons for the time being belong.
- (4) Past service is no bar to appointment as a member of the Committee.

Tenure of office

15

- 2 (1) A member of the Committee shall hold office for the duration of the Parliament in which he is appointed.
- (2) But a member shall vacate office –
 - (a) if he ceases to be a member of the House of Commons;
 - (b) if he becomes a Minister of the Crown; or 20
 - (c) if he is required to do so by the Prime Minister on the appointment, in accordance with this Schedule, of another person as a member in his place.
- (3) A member of the Committee may resign at any time by giving notice to the Prime Minister. 25

Procedure

- 3 (1) The quorum of the Committee is three.
- (2) The Chairman may appoint one of the members of the Committee to act, in his absence, as chairman at any meeting of the Committee.
- (3) If, on any matter, there is an equality of voting among the members of the Committee, the Chairman is to have a second or casting vote. 30
- (4) But sub-paragraph (3) does not apply to a chairman appointed under sub-paragraph (2).
- 4 Apart from the provision made in paragraph 3, the Committee may determine its own procedure. 35

Reports

- 5 (1) At least once a year the Committee shall make a report on the discharge of its functions to the Prime Minister.
- (2) The Committee may at any time report to the Prime Minister on any matter relating to the discharge of those functions. 40

- (3) The Prime Minister shall lay before each House of Parliament a copy of each report made by the Committee under this paragraph.

Executive Powers and Civil Service Bill [HL]

A

B I L L

To place under the authority of Parliament executive powers exercisable by Ministers of the Crown by virtue of the Royal prerogative; to make provision relating to the appointment and conduct of, and general duties relating to, civil servants and special advisers; to establish a procedure for the making of certain public appointments; and for connected purposes.

The Lord Lester of Herne Hill

Ordered to be Printed, 18th December 2003

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PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS
LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx net