

Civil Service (No. 2) Bill [HL]

[AS AMENDED IN COMMITTEE]

CONTENTS

PART 1

THE CIVIL SERVICE AND SPECIAL ADVISERS

Appointments to the Civil Service

- 1 Appointments to the Civil Service
- 2 The Civil Service Commission
- 3 Duties of the Civil Service Commission
- 4 General duty of persons making Civil Service appointments

Impartiality of the Civil Service and Civil Service Commission

- 5 Duties of Ministers and special advisers to uphold impartiality

Civil servants and special advisers

- 6 Civil servants and special advisers: duties and restrictions
- 7 Information relating to special advisers

Codes of conduct

- 8 Codes of conduct for civil servants and special advisers
- 9 Codes of conduct: procedure

Investigations by the Civil Service Commission

- 10 Power to investigate contraventions relating to the Civil Service
- 11 Investigation procedure

PART 2

NATIONALITY REQUIREMENTS

- 12 Removal of existing nationality requirements
- 13 Power to impose new nationality requirements
- 14 Repeals and revocation

PART 3

SUPPLEMENTAL

- 15 Interpretation
- 16 Regulations, orders and revocation
- 17 Expenses
- 18 Short title, commencement and extent

Schedule 1 – Civil Service Commission for England, Wales and Scotland
Schedule 2 – Repeals and Revocations

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[AS AMENDED IN COMMITTEE]

TO

Make provision relating to the appointment and conduct of, and general duties relating to, civil servants and special advisers; to make provision for and in connection with the removal of general restrictions as to nationality which apply to persons employed or holding office in any civil capacity under the Crown; 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

THE CIVIL SERVICE AND SPECIAL ADVISERS

Appointments to the Civil Service

1 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. 5
- (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 3(1)(b). 10
- (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. 15

- (4) Regulations under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

2 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”). 5
- (2) The Civil Service Commission shall consist of the First Commissioner and not less than six nor more than twelve other Commissioners.
- (3) The Commissioners shall be appointed by Her Majesty upon the recommendation of the Minister for the Civil Service. 10
- (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.
- (5) “Qualifying political party” means any registered political party to which, for the time being – 15
- (a) two or more members of the House of Commons belong;
 - (b) two or more members of the Scottish Parliament belong;
 - (c) two or more members of the National Assembly for Wales belong.
- (6) Schedule 1 makes provision about the constitution and status of the Commission. 20

3 Duties of the Civil Service Commission

- (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 1; 25
 - (b) to publish and maintain the Recruitment Code for the Civil Service (“the Recruitment Code”);
 - (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; 30
 - (e) to audit, and periodically report on, the operation of the Civil Service Code issued under section 8(1)(a);
 - (f) to hear and determine any appeals made to it in accordance with that Code; and 35
 - (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 1;
 - (b) specifying exceptions to those conditions in such circumstances as the Commission thinks fit; 40
 - (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 –
“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.
- 4 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*
- 5 Duties of Ministers and special advisers to uphold impartiality**
- (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.
- Civil servants and special advisers*
- 6 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.
- (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.
- 7 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.
- (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;
(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

8 Codes of conduct for civil servants and special advisers

- (1) The Minister for the Civil Service shall prepare, issue and maintain— 5
 (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 —
 (a) the constitutional framework of responsibilities within which civil servants and special advisers are to work; and 10
 (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.

9 Codes of conduct: procedure

- (1) This section applies in any case where the Minister for the Civil Service proposes— 15
 (a) to issue a new Civil Service Code or the Special Advisers’ Code; or
 (b) to make an amendment to either Code.
- (2) The Minister for Civil Service shall—
 (a) seek preliminary views on the proposal from the Civil Service Commission; 20
 (b) publish a draft of the proposal, together with—
 (i) an explanation of its purpose;
 (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 5 and 6; and 25
 (iii) notice that representations about the proposals may be made to him within a specified time; and
 (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). 30
- (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 35
 (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.
- (6) An order under subsection (5) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 40

Investigations by the Civil Service Commission

10 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 –
 - (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.5
- (2) The Civil Service Commission may conduct such investigations as it thinks fit.
- (3) An investigation under subsection (2) may be conducted either – 10
 - (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.

11 Investigation procedure

- (1) If the Civil Service Commission proposes to conduct an investigation under section 10, it shall give to every person whose affairs it intends to investigate notice of the proposal. 15
- (2) A notice under subsection (1) shall set out the scope and purpose of the investigation.
- (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. 20
- (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. 25
- (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.
- (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 – 30
 - (a) to provide specified information or information of a specified description;
 - (b) to produce specified documents or documents of a specified description; 35
 - (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. 40

PART 2

NATIONALITY REQUIREMENTS

12 Removal of existing nationality requirements

- (1) Section 3 of the Act of Settlement 1700 (c. 2) (which, subject to exceptions, prevents persons born outside the United Kingdom from holding certain offices) shall not prevent any person from being employed or holding office in a civil capacity under the Crown. 5
- (2) In the Aliens Restriction (Amendment) Act 1919 (c. 92), section 6 (which, subject to exceptions, prevents the appointment of aliens to posts in the Civil Service) is omitted. 10
- (3) The Aliens' Employment Act 1955 (c. 18) is hereby repealed.
- (4) The European Communities (Employment in the Civil Service) Order 1991 (S.I. 1991/1221) is hereby revoked.

13 Power to impose new nationality requirements

- (1) Rules may be made imposing requirements as to nationality which must be satisfied by a person employed or holding office in a civil capacity under the Crown specified in the rules. 15
- (2) The rules may also impose requirements as to nationality which must be satisfied by persons of a description specified in the rules who are related to, or living with, such a person. 20
- (3) The rules may be made –
- (a) by a Minister of the Crown; or
 - (b) by any other officer of the Crown to whom that power has been delegated by a Minister of the Crown.
- (4) The rules may include provision – 25
- (a) exempting persons of a description specified in the rules (and persons related to, or living with, them) who were first employed, or first held office, in the capacity in question before a specified date; and
 - (b) allowing any Minister or other officer of the Crown to grant exemptions in cases in which the Minister or officer considers it appropriate. 30
- (5) The reference in section 75(5)(b) of the Race Relations Act 1976 (c. 74) (rules relating to nationality etc. of persons employed in service of Crown) to the implementation of rules includes the grant of (or refusal to grant) exemptions under subsection (4)(b).

14 Repeals and revocation 35

Schedule 2 (repeals and revocations) has effect.

PART 3

SUPPLEMENTAL

15 Interpretation

In this Act –

- “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; 5
- “Civil Service” means – 10
- (a) Her Majesty’s Home Civil Service;
 - (b) Her Majesty’s Diplomatic Service;
 - (c) the Security Service;
 - (d) the Secret Intelligence Service; and 15
 - (e) the Government Communications Headquarters within the meaning of the Intelligence Services Act 1994 (c. 13);
- “Civil Service Code” has the meaning given in section 8(1)(a);
- “Civil Service Commission” means the Civil Service Commission for England, Wales and Scotland; 20
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
- “Recruitment Code” means the Recruitment Code for the Civil Service published and maintained in accordance with section 3;
- “registered political party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41); 25
- “Special Advisers’ Code” has the meaning given in section 8(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. 30

16 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 – 35
 - (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; and
 - (b) make different provision for different cases.

17 Expenses

- There shall be paid out of money provided by Parliament – 40
- (a) any expenditure incurred by the Minister for the Civil Service under or by virtue of this Act; and
 - (b) any increase attributable to the provisions of this Act in the sums which under any other enactment are paid out of moneys so provided.

18 Short title, commencement and extent

- (1) This Act may be cited as the Civil Service Act 2004.
- (2) Part 3 comes into force on the day on which this Act is passed.
- (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 nothing in Part 1 applies in relation to the Northern Ireland Civil Service.

SCHEDULES

SCHEDULE 1

Section 2

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. | 5 |
| | (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. | 10 |
| | (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 – | 15 |
| | (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; | 20 |
| | (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 | |
| | (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. | 25 |

Staff

- | | | |
|---|--|----|
| 3 | (1) The Commission may, with the approval of the Minister for the Civil Service as to numbers and terms and conditions of service – | 30 |
| | (a) appoint such staff as it considers necessary; | |
| | (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. | 35 |

- (3) No determination may be made under sub-paragraph (2) without the approval of the Minister for the Civil Service.

Procedure

- 4 (1) The Commission may regulate its own procedure.
- (2) In determining its own procedure the Commission may, in particular, make provision about—
- (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. 10
- 6 (1) The application of the seal of the Commission shall be authenticated by the signature of—
- (a) any Commissioner; or 15
 - (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.

The Commission's powers 20

- 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; 25
 - (b) prepare a statement of accounts in respect of each of its financial years; and
 - (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. 30
- (2) The Comptroller and Auditor General shall—
- (a) examine, certify and report on each statement of accounts received by him; and
 - (b) lay copies of each statement before Parliament.
- (3) “Financial year” means the period of 12 months ending with 31st March. 35

Reports

- 9 (1) At least once a year, the Commission shall lay before each House of Parliament a report on—
- (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. 40

- (2) The report shall (among other things) give details of how the Commission’s resources have been allocated.
- (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

5

- 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 –

“The Civil Service Commission for England, Wales and Scotland appointed under section 2 of the Executive Powers and Civil Service Act 2004.”

10

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 2 of the Executive Powers and Civil Service Act 2004.”

15

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

20

SCHEDULE 2

Section 14

REPEALS AND REVOCATIONS

25

<i>Title and reference</i>	<i>Extent of repeal or revocation</i>	
Aliens Restriction (Amendment) Act 1919 (c. 92)	Section 6.	
Aliens’ Employment Act 1955 (4 & 5 Eliz. 2 c. 18)	The whole Act.	
European Communities (Employment in the Civil Service) Order 1991 (S.I. 1991/1221)	The whole Order.	30

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The Lord Lester of Herne Hill

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