

Government response to the House of Lords Constitution Select Committee's 17th Report on "Permanent Secretaries: their appointment and removal"

[hyperlink to the report](#)

1. The Government is grateful to the House of Lords Constitution Committee for their inquiry into the appointment and removal of permanent secretaries, which looked into the nature of the relationship between ministers and civil servants, following some high-profile permanent secretary departures. The report highlights the fundamental role the Civil Service plays in the governance of the United Kingdom. The Government shares the Committee's belief that the impartiality - and perceived impartiality - of the Civil Service is a central tenet of our constitution.
2. The Independent Review of Governance and Accountability in the Civil Service, which was led by the Rt Hon Lord Maude of Horsham and published on 13 November 2023, included a number of proposals to improve efficiency, clarify accountabilities, and change structures in the Civil Service. As set out in the Government's initial response (Hansard, 13 November 2023, HCWS30), this is a welcome contribution and the Government will now consider the recommendations carefully and respond in due course.
3. The response to the Committee's recommendations are below:

CHAPTER 1: INTRODUCTION

Constitutional position and the role of the Civil Service

The Northcote-Trevelyan report

4. ***Conclusion: The impartiality and perceived impartiality of the Civil Service is a central tenet of our constitution and not seriously challenged. Any fundamental changes to it should be made consciously and openly, and should be implemented only following careful scrutiny. In some cases, the change would require amendment of the Constitutional Reform and Governance Act 2010. Where legislative change is not needed change should still be carried out with appropriate scrutiny and cross-party agreement. (Paragraph 17).***
5. ***Recommendation: Under no circumstances should significant changes to the constitutional balance of the appointment and departure processes for civil servants take place through unscrutinised evolution of practice. (Paragraph 17).***

6. The Government agrees with the Committee's conclusions and recommendation.

CHAPTER 2: APPOINTMENT PROCESS

Changes to the current system?

Ministerial involvement

7. *Conclusion: The provision of formal ministerial involvement in the appointment process strikes an appropriate balance, allowing ministers input into the job description, the person specification and the composition of the panel while preventing them from engineering the process in favour of a preferred candidate. This balance preserves the principle of merit, and it is important that ministers have proper regard to that principle throughout the process. (Paragraph 52).*
8. *We were told that ministers were not sufficiently aware of the extent of their influence over appointments, or the limits on it. (Paragraph 53).*
9. *We see no reason to alter the current practice by which the Prime Minister is presented with a choice of appointable candidates for permanent secretary posts. It is important the Prime Minister makes such a choice conscious of their constitutional position as Minister for the Civil Service and with proper regard for the principle of merit. They should ensure that the chosen candidate is able to work with any minister, of whatever political persuasion, who might be appointed to the relevant department. (Paragraph 54).*
10. ***Recommendation: It is incumbent upon permanent secretaries to brief incoming ministers on the degree to which they can be involved in the appointment of senior civil servants, and to repeat this briefing and clarify the extent to which the minister wishes to be involved when a relevant vacancy arises. This will help to avoid tension during the recruitment process and reinforce ministerial ownership of the process and the quality of those appointed. (Paragraph 53).***
11. The Government agrees with the Committee's finding that the current level of ministerial involvement in recruitment strikes the right balance. The Government agrees that it is essential that ministers are properly briefed about the ways in which they may be involved in the recruitment of senior staff in their department. A note to permanent secretaries and HR directors reminding them about the opportunities for ministers to be involved in the recruitment of senior staff will be sent.

Defining “merit”

12. *Conclusion: In our view “merit” includes having the right personality and characteristics to carry out the tasks required at a particular time. We are not convinced the Recruitment Principles need to be amended to reflect this. But it should be implicit in the preparation of a good job description and person specification. It would also help give ministers confidence that they have appointed the right person for their requirements if they have worked closely with the Civil Service Commission to ensure their priorities are reflected in the job description and pursued at interview. (Paragraph 58).*

13. Recommendation: None

14. It is essential that the published job description and person specification for all vacancies accurately capture ministers’ requirements of the role holder. The Government agrees that there is no need to amend the definition of merit in the Civil Service Commission’s Recruitment Principles.

Appointment of Cabinet Secretary

15. *Conclusion: Given the importance of the Cabinet Secretary’s role, including as Head of the Civil Service, the appointment process for that post should be regularised, set out and made transparent in a manner similar to that for permanent secretaries. This would strengthen permanent secretaries’ confidence in the management of the Civil Service. The closeness of the working relationship between the Cabinet Secretary and the Prime Minister means that the Prime Minister should remain closely involved with the appointment and make the final choice. (Paragraph 63).*

16. Recommendation: The exact nature of the process would need to be adapted in accordance with this unique role, with different considerations potentially applying to the roles of Cabinet Secretary and Head of the Civil Service, should they be separated. The Recruitment Principles should be updated to provide for a strengthened process for Cabinet Secretary and Head of Civil Service appointments. This should then be reflected in an updated Cabinet Manual. (Paragraph 63).

17. The Government agrees that it is important to maintain confidence in senior Civil Service appointments, including that of the Cabinet Secretary and Head of the Civil Service. Recruitment to the position of Cabinet Secretary and Head of the Civil Service is likely to share characteristics with other senior appointments but any process should be sufficiently flexible to enable the Prime Minister of the day to refine the selection approach as they wish, before

making their final appointment.

Involvement of special advisers

18. Conclusion: Private discussions between ministers and their special advisers are impossible to regulate, but the decision with respect to these issues must be that of the minister. (Paragraph 71).

19. Public statements by special advisers about the recruitment, performance or departure of civil servants are unacceptable as they risk giving the impression - or tolerating the reality - that special advisers are managing civil servants. (Paragraph 72).

20. Recommendation: Special advisers should not be formally involved in the appointment or departure processes. Ministers are responsible for the actions of their special advisers and they should ensure this does not happen. (Paragraphs 71 and 72).

21. The Civil Service Commission's Recruitment Principles make clear that special advisers have no role in the recruitment or appointment of civil servants. The Government supports the Committee's conclusions and agrees with their recommendations.

External and internal appointments

22. Conclusion: External appointments to the Civil Service can fill skills gaps and refresh organisational culture. There may be great benefit in encouraging inward and outward moves, both for the career development of individuals and to ensure the Civil Service is as effective as it can be. Nonetheless, skills acquired and experience accrued in the Civil Service should be valued, as should the continuity provided by a cadre of long-serving civil servants working for administrations of different political persuasions. If the 'external by default' system is to succeed it must be monitored closely to ensure that departments properly commit to it. (Paragraph 78).

23. Recommendation: If the 'external by default' system is to succeed it must be monitored closely to ensure that departments properly commit to it. (Paragraph 78).

24. The Minister for Cabinet Office wrote to all Secretaries of State in April 2023 to reinforce the importance of the 'external by default' policy and to ask for continued support in its full implementation. Data to monitor this is collected regularly and guidance in the revised Civil Service Recruitment Framework reinforces this commitment. The Government supports the Committee's

conclusion and agrees with their recommendation.

Oversight of external and internal appointments

25. *Conclusion: The Senior Leadership Committee is an opaque body, with its role having been described in apparently contradictory terms. We welcome the Cabinet Secretary's undertaking to publish details of its terms of reference and membership. (Paragraph 88).*
26. *The governance structure concerning selection routes for very senior appointments is convoluted and unclear, and has evolved significantly since the Senior Appointments Protocol was agreed and the most recent Recruitment Principles published. Among other changes, the Prime Minister now appears directly to approve appointments at director general level, an evolution not widely publicised. (Paragraph 89).*
27. *We look forward to seeing the forthcoming work, promised by the Cabinet Secretary, on the rules concerning business appointments and the role of ACOBA in setting expectations for those seeking to enter the Civil Service. Regularisation of inward and outward moves might entail a greater role for the Civil Service Commission. This might require the relationship between its responsibilities and those of the Senior Leadership Committee and ACOBA to be redefined. (Paragraph 93).*
- 28. Recommendation: The Senior Leadership Committee should be as transparent as possible, for example by publishing or providing to the Civil Service Commission an annual account of its activities. (Paragraph 88).**
- 29. The Senior Appointments Protocol and Recruitment Principles should both be updated, in particular to reflect the 'external by default' policy and the Prime Minister's role in approving director general appointments. We welcome the commitment of the Cabinet Secretary and First Civil Service Commissioner to ensure this is done. The Senior Appointments Protocol and Recruitment Principles should both be updated, in particular to reflect the 'external by default' policy and the Prime Minister's role in approving director general appointments. (Paragraph 89).**
30. *Work to update the Senior Appointments Protocol is already underway. The Civil Service Commission will consider any implications for the Recruitment Principles and consult the Minister for the Civil Service on any proposed changes, as required by the Constitution and Reform Act 2010.*

31. An annual update on the work undertaken by the Senior Leadership Committee will be provided to the First Civil Service Commissioner and other members of the Committee. The membership and Terms of Reference, which have already been shared with the Committee, will be published on Gov.UK.
32. In July 2023, the Government announced its response to the reports from the Committee on Standards in Public Life, Nigel Boardman's review and the Public Administration and Constitutional Affairs Committee. This response outlined plans to reform the Business Appointment Rules which will include changes to Civil Service contracts, and the development of a ministerial deed, to make the Business Appointment Rules more enforceable. These changes are designed to provide greater certainty for individuals as they will know the likely conditions they will face in any future employment at the point they agree to their contract or deed.

CHAPTER 3: DEPARTURES

Dismissal on performance of misconduct grounds

33. *Conclusion: In the rare circumstances in which a permanent secretary must be dismissed on performance or misconduct grounds this should be treated wholly as a human resources matter, following due process. We welcome the current process of performance and misconduct management for permanent secretaries as outlined by the Cabinet Office. (Paragraph 102).*
34. ***Recommendation: There is scope for the Civil Service Commission to play a role in the dismissal of senior civil servants on performance or conduct grounds, by ensuring due process is followed. (Paragraph 103).***
35. The existing policies for managing the performance and conduct of permanent secretaries are fit for purpose, as acknowledged by the Committee (above). As these are HR matters (undertaken by the employer) the Government does not at present see a role for the Commission to play in ensuring due process is followed. The First Civil Service Commissioner agrees.

Departures on other grounds

Fixed five-year tenure

36. *Conclusion: There is insufficient evidence that fixed five-year tenure has had any general impact on churn at permanent secretary level, notwithstanding the notable dip between 2019 and 2023. Nonetheless, it serves as a valuable check on a permanent secretary's continuation in post, allowing the Head of the Civil Service, the secretary of state and the Prime Minister to consider*

various factors before deciding whether renewal is appropriate. (Paragraph 111).

37. *We acknowledge the risk that where the completion of a permanent secretary's five-year tenure coincides with a change of Government, it could be used as an opportunity to appoint a permanent secretary more politically aligned to the incoming Government. However, there is insufficient evidence to suggest this has happened to date. (Paragraph 112).*

Recommendation: None

38. The Government welcomes the Committee's conclusion that tenure has not had an adverse impact on permanent secretary churn.

Poor relationship between a permanent secretary and secretary of state

39. *Conclusion: We recognise that for a permanent secretary fostering a positive relationship with the secretary of state is, in itself, a matter of performance. The Recruitment Principles require panels to assess a candidate's ability to work with the minister as part of the permanent secretary appointment process and it is rare that a breakdown in relationship occurs. However, forming a positive relationship is a two-way process. Incoming ministers must allow permanent secretaries time to establish a productive relationship before seeking their removal. It is vital that ministers prize expertise and good advice over pre-conceived notions about their ability to work with a particular permanent secretary. (Paragraph 122).*

40. *The Cabinet Secretary and Head of the Civil Service has a vital role in ensuring that individuals are not removed from their posts by a Prime Minister without due process. If the working relationship between a secretary of state and a permanent secretary is irrecoverable the Head of the Civil Service must be given the opportunity to manage the individual's transfer to another role or, where appropriate, their retirement. (Paragraph 123).*

41. Recommendation: Removal on the grounds of a poor working relationship must not become cover for arbitrary removal of permanent secretaries on political or ideological grounds. (Paragraph 122).

42. There is a case for formalising the departure process in situations where there is no issue of performance or misconduct (see Paragraph 131). (Paragraph 123).

43. The Government welcomes the Committee's conclusions and agrees that permanent secretaries should not be removed from their posts without

process. However, if attempts to resolve the situation have been unsuccessful and a relationship breaks down irrevocably, swift action will be needed to resolve the situation and stabilise the leadership of the organisation. In practice, the Cabinet Secretary, Secretary of State and PM will be closely involved in such cases. Options to resolve the situation may include redeployment to an alternative (or temporary) role, or if no alternative role can be found, an exit on the grounds of workforce efficiency under the terms of the Civil Service Compensation Scheme may be sought.

Political or ideological grounds

44. Conclusion: While removal of senior civil servants on political or ideological grounds may be rare, we are concerned that recent examples may be an indication that there are insufficient safeguards around the departure of senior civil servants. (Paragraph 130).

45. Recommendation: Formal departure processes should be set out in writing, requiring ministers and the Prime Minister to explain to the Civil Service Commission—in private if necessary—their decision to remove and replace a senior civil servant. A written record of the decision and the reasons for it should be kept. These processes should be sufficiently flexible to allow a minister to replace at short notice a senior civil servant with whom a working relationship has broken down. However, it is desirable that senior civil servants are given sufficient opportunity to build a positive working relationship with the minister and demonstrate that they can deliver the Government's priorities. Under no circumstances should civil servants be dismissed on purely political or ideological grounds. (Paragraph 131).

46. The importance of a relationship of trust and confidence between a minister and their civil servants cannot be understated. Formal HR processes already exist around performance management, conduct and discipline issues and sit alongside an individuals' core employment rights. Issues about personal fit and personal relationships should be dealt with in an open, transparent and proper way.

CHAPTER 4: POLITICISATION IN APPOINTMENTS AND DEPARTURES

Politicisation or personalisation?

47. Conclusion: The small number of recent high-profile removals of senior civil servants on what appeared to be political or ideological grounds does not amount to a trend. However, some recent departures and appointments have been conducted in the public eye and might be seen to reflect a desire on the

part of ministers to personalise appointments and assert their authority. (Paragraph 136).

48. Recommendation: This practice should be avoided. It risks senior Civil Service turnover coinciding with ministerial churn, creating a perception of politicisation and damaging institutional knowledge. (Paragraph 136).

49. The Government welcomes the Committee's conclusion that there is no evidence of a trend for the removal of civil servants on political or ideological grounds.

Is broad political alignment necessary or desirable?

50. Conclusion: We reject the notion that broad political alignment should be a relevant consideration in the appointment of senior civil servants. The role of the Civil Service is to provide honest, objective and impartial advice to the Government. After advice has been provided and a secretary of state makes a decision, it becomes the job of the civil service to implement that decision. If a civil servant fails to implement the secretary of state's decision it is a performance issue and should be dealt with according to the processes outlined in chapter 3. Introducing a criterion of broad political alignment between the secretary of state and the permanent secretary unhelpfully complicates the existing duty on civil servants to serve the government of the day to the best of their ability regardless of their own political beliefs. It risks undermining senior civil servants' ability to establish the confidence of future secretaries of state and governments of different dispositions. (Paragraph 146).

51. Recommendation: None

52. The Government agrees with the Committee's conclusions on this issue.

Risks to the accounting officer role

53. Conclusion: The role of accounting officer is a valuable aspect of the constitution. To be effective, this function relies on the impartiality of permanent secretaries and their ability to 'speak truth to power'. A shift towards a system of senior civil servant appointments or departures with a greater degree of ministerial influence would risk having a chilling effect on accounting officer functions to the detriment of the public interest. (Paragraph 155).

54. Recommendation: None

55. The Government agrees that Accounting Officers perform an essential function. It is long-standing constitutional practice that each Accounting Officer is personally and directly responsible to Parliament for the stewardship of resources in their organisation, and their ability to carry out these responsibilities effectively must be maintained.

CHAPTER 5: PERMANENT SECRETARIES IN DEVOLVED ADMINISTRATIONS

Position of permanent secretaries in devolved nations

56. Conclusion: We recognise that the arrangement whereby senior civil servants in Scotland and Wales are accountable to the Scottish or Welsh Government but are line managed by the Head of the Civil Service of the United Kingdom has the potential to cause confusion about the boundary between devolved competence and reserved matters. However, it is important that the principle of a single Civil Service across England, Wales and Scotland is maintained. (Paragraph 167).

57. Recommendation: For this reason we consider it the role of the Cabinet Secretary, as Head of the Civil Service of the United Kingdom, including Scotland and Wales, to manage any challenges as they arise. (Paragraph 167).

Boundary between devolved competence and reserved matters

58. Conclusion: We welcome the Cabinet Secretary's commitment to provide further guidance to clarify that civil servants in the devolved administrations should work and spend public funds exclusively on matters within devolved competence. (Paragraph 172).

59. Recommendation: If the permanent secretaries in Scotland or Wales are concerned that civil servants are being asked to work on tasks outside devolved competence they should raise this as an issue with the Cabinet Secretary as their line manager. The Cabinet Secretary should be in a position to provide direction with respect to the permanent secretary's executive responsibility. In cases of uncertainty the permanent secretary should seek a written direction from the relevant devolved minister. (Paragraph 172).

60. The Government agrees with the Committee that the principle of a single Civil Service across England, Scotland and Wales must be maintained. The Government recognises the strength of the argument that further guidance to tighten up best practice is required and is in the process of considering how such guidance would support civil servants working in the devolved

administrations on areas that may relate to reserved matters, and help ensure the Civil Service Code is always maintained.

January 2024