



# Constitutional Reform and Governance Act 2010

## 2010 CHAPTER 25

### PART 1

#### THE CIVIL SERVICE

#### CHAPTER 1

##### STATUTORY BASIS FOR MANAGEMENT OF THE CIVIL SERVICE

##### *Application*

### **1 Application of Chapter**

- (1) Subject to subsections (2) and (3), this Chapter applies to the civil service of the State.
- (2) This Chapter does not apply to the following parts of the civil service of the State—
  - (a) the Secret Intelligence Service;
  - (b) the Security Service;
  - (c) the Government Communications Headquarters;
  - (d) the Northern Ireland Civil Service;
  - (e) the Northern Ireland Court Service.
- (3) Further, this Chapter—
  - (a) does not apply in relation to the making, outside the United Kingdom, of selections of persons who are not members of the civil service of the State for appointment to that service for the purpose only of duties to be carried out wholly outside the United Kingdom;
  - (b) does not apply in relation to the appointment of a person to the civil service of the State who was selected for the appointment as mentioned in paragraph (a);

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 Constitutional Reform and Governance Act 2010, Part 1. (See end of Document for details)*

- (c) does not apply to the civil service of the State so far as it consists of persons—
  - (i) who were appointed to the civil service of the State as mentioned in paragraph (b), and
  - (ii) all of whose duties are carried out wholly outside the United Kingdom.
- (4) In this Chapter references to the civil service—
  - (a) are to the civil service of the State excluding the parts mentioned in subsections (2) and (3)(c);
  - (b) are to be read subject to subsection (3)(a) and (b);
 and references to civil servants are to be read accordingly.

**Commencement Information**

**II** S. 1 in force at 11.11.2010 by [S.I. 2010/2703](#), [art. 2\(a\)](#)

*Civil Service Commission*

**2 Establishment of the Civil Service Commission**

- (1) There is to be a body corporate called the Civil Service Commission (“the Commission”).
- (2) Schedule 1 (which is about the Commission) has effect.
- (3) The Commission has the role in relation to selections for appointments to the civil service set out in sections 11 to 14.
- (4) See also—
  - (a) section 9 (which sets out the Commission's role in dealing with conduct that conflicts with civil service codes of conduct);
  - (b) section 17 (under which the Commission may be given additional functions).

**Commencement Information**

**I2** S. 2 in force at 11.11.2010 by [S.I. 2010/2703](#), [art. 2\(a\)](#)

*Power to manage the civil service*

**3 Management of the civil service**

- (1) The Minister for the Civil Service has the power to manage the civil service (excluding the diplomatic service).
- (2) The Secretary of State has the power to manage the diplomatic service.
- (3) The powers in subsections (1) and (2) include (among other things) power to make appointments.
- (4) But they do not cover national security vetting (and, accordingly, subsections (1) and (2) do not affect any power relating to national security vetting).

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- (5) The agreement of the Minister for the Civil Service is required for any exercise of the power in subsection (2) in relation to—
  - (a) remuneration of civil servants (including compensation payable on leaving the civil service), or
  - (b) the conditions on which a civil servant may retire.
- (6) In exercising his power to manage the civil service, the Minister for the Civil Service shall have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions governing the relationship between Parliament and Her Majesty's Government.

#### Commencement Information

**I3** S. 3 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

## 4 Other statutory management powers

- (1) All statutory management powers in effect when section 3 comes into force continue to have effect.
- (2) But those and all other statutory management powers are exercisable subject to section 3.
- (3) “Statutory management power” means a power in relation to the management of any part of the civil service conferred by an Act (whenever passed) or an instrument under an Act (whenever made).
- (4) “Act” includes—
  - (a) an Act of the Scottish Parliament;
  - (b) an Act or Measure of the National Assembly for Wales;but excludes this Part of this Act.
- (5) Subsection (2) does not apply to a statutory management power conferred by the Superannuation Act 1965 or the Superannuation Act 1972 or an instrument under any of those Acts.

#### Commencement Information

**I4** S. 4 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

### *Codes of conduct*

## 5 Civil service code

- (1) The Minister for the Civil Service must publish a code of conduct for the civil service (excluding the diplomatic service).
- (2) For this purpose, the Minister may publish separate codes of conduct covering civil servants who serve the Scottish Executive or the Welsh Assembly Government.

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- (3) Before publishing a code (or any revision of a code) under subsection (2), the Minister must consult the First Minister for Scotland or the First Minister for Wales (as the case may be).
- (4) In this Chapter “civil service code” means a code of conduct published under this section as it is in force for the time being.
- (5) The Minister for the Civil Service must lay any civil service code before Parliament.
- (6) The First Minister for Scotland must lay before the Scottish Parliament any civil service code under subsection (2) that covers civil servants who serve the Scottish Executive.
- (7) The First Minister for Wales must lay before the National Assembly for Wales any civil service code under subsection (2) that covers civil servants who serve the Welsh Assembly Government.
- (8) A civil service code forms part of the terms and conditions of service of any civil servant covered by the code.

**Commencement Information**

**I5** S. 5 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

## 6 Diplomatic service code

- (1) The Secretary of State must publish a code of conduct for the diplomatic service.
- (2) In this Chapter “diplomatic service code” means the code of conduct published under this section as it is in force for the time being.
- (3) The Secretary of State must lay the diplomatic service code before Parliament.
- (4) The diplomatic service code forms part of the terms and conditions of service of any civil servant covered by the code.

**Commencement Information**

**I6** S. 6 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

## 7 Minimum requirements for civil service and diplomatic service codes

- (1) This section sets out the provision that must be included in a civil service code or the diplomatic service code in relation to the civil servants covered by the code. (The code may include other provision as well.)
- (2) The code must require civil servants who serve an administration mentioned in subsection (3) to carry out their duties for the assistance of the administration as it is duly constituted for the time being, whatever its political complexion.
- (3) The administrations are—
  - (a) Her Majesty's Government in the United Kingdom;
  - (b) the Scottish Executive;

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- (c) the Welsh Assembly Government.
- (4) The code must require civil servants to carry out their duties—
  - (a) with integrity and honesty, and
  - (b) with objectivity and impartiality.
- (5) But the code need not require special advisers (see section 15) to carry out their duties with objectivity or impartiality.

#### Commencement Information

I7 S. 7 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

## 8 Special advisers code

- (1) The Minister for the Civil Service must publish a code of conduct for special advisers (see section 15).
- (2) For this purpose, the Minister may publish separate codes of conduct covering special advisers who serve the Scottish Executive or the Welsh Assembly Government.
- (3) Before publishing a code (or any revision of a code) under subsection (2), the Minister must consult the First Minister for Scotland or the First Minister for Wales (as the case may be).
- (4) In this Chapter “special advisers code” means a code of conduct published under this section as it is in force for the time being.
- (5) Subject to subsection (6), a special advisers code must provide that a special adviser may not—
  - (a) authorise the expenditure of public funds;
  - (b) exercise any power in relation to the management of any part of the civil service of the State;
  - (c) otherwise exercise any power conferred by or under this or any other Act or any power under Her Majesty's prerogative.
- (6) A special advisers code may permit a special adviser to exercise any power within subsection (5)(b) in relation to another special adviser.
- (7) In subsection (5)(c) “Act” includes—
  - (a) an Act of the Scottish Parliament;
  - (b) an Act or Measure of the National Assembly for Wales;
  - (c) Northern Ireland legislation.
- (8) The Minister for the Civil Service must lay any special advisers code before Parliament.
- (9) The First Minister for Scotland must lay before the Scottish Parliament any special advisers code under subsection (2) that covers special advisers who serve the Scottish Executive.
- (10) The First Minister for Wales must lay before the National Assembly for Wales any special advisers code under subsection (2) that covers special advisers who serve the Welsh Assembly Government.

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- (11) A special advisers code forms part of the terms and conditions of service of any special adviser covered by the code.

**Commencement Information**

**I8** S. 8 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

**9 Conduct that conflicts with a code of conduct: complaints by civil servants**

- (1) This section applies in relation to any civil service code and the diplomatic service code; and “code” is to be read accordingly.
- (2) Subsection (3) applies if a civil servant (“P”) covered by a code has reason to believe—
- (a) that P is being, or has been, required to act in a way that conflicts with the code, or
  - (b) that another civil servant covered by the code is acting, or has acted, in a way that conflicts with the code.
- (3) P may complain to the Commission about the matter.
- (4) A code may include provision about the steps that must be taken by a civil servant before making a complaint (and P must take the steps accordingly).
- (5) The Commission—
- (a) must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;
  - (b) after considering a complaint, may make recommendations about how the matter should be resolved.
- (6) For the purposes of the investigation or consideration of a complaint, the following must provide the Commission with any information it reasonably requires—
- (a) civil service management authorities;
  - (b) the complainant;
  - (c) any civil servant whose conduct is covered by the complaint.
- (7) The revision of a code does not affect the application of this section in relation to anything occurring before the revision.

**Commencement Information**

**I9** S. 9 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

*Appointment*

**10 Selections for appointments to the civil service**

- (1) This section applies to the selection of persons who are not civil servants for appointment to the civil service.
- (2) A person's selection must be on merit on the basis of fair and open competition.

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- (3) The following selections are excepted from this requirement—
  - (a) a person's selection for an appointment to the diplomatic service either as head of mission or in connection with the person's appointment (or selection for appointment) as Governor of an overseas territory;
  - (b) selection for an appointment as special adviser (see section 15);
  - (c) a selection excepted by the recruitment principles (see sections 11 and 12(1)(b)).
- (4) In determining for the purposes of subsection (1) whether or not a person is a civil servant, ignore any appointment for which the person was selected in reliance on subsection (3).
- (5) But, in relation to persons selected in reliance on subsection (3)(c), the recruitment principles may disapply subsection (4) in specified cases.

**Commencement Information**

**110** S. 10 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

## 11 Recruitment principles

- (1) The Commission must publish a set of principles to be applied for the purposes of the requirement in section 10(2).
- (2) Before publishing the set of principles (or any revision of it), the Commission must consult the Minister for the Civil Service.
- (3) In this Chapter “recruitment principles” means the set of principles published under this section as it is in force for the time being.
- (4) Civil service management authorities must comply with the recruitment principles.

**Commencement Information**

**111** S. 11 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

## 12 Approvals for selections and exceptions

- (1) The recruitment principles may include provision—
  - (a) requiring the Commission's approval to be obtained for a selection which is subject to the requirement in section 10(2);
  - (b) excepting a selection from that requirement for the purposes of section 10(3)(c).
- (2) The Commission may participate in the process for a selection for which its approval is required by provision within subsection (1)(a).
- (3) It is up to the Commission to decide how it will participate.
- (4) Provision within subsection (1)(b) may be included only if the Commission is satisfied—
  - (a) that the provision is justified by the needs of the civil service, or

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- (b) that the provision is needed to enable the civil service to participate in a government employment initiative that major employers in the United Kingdom (or a part of the United Kingdom) have been asked to participate in.
- (5) Provision within subsection (1)(a) or (b) may be made in any way, including (for example) by reference to—
  - (a) particular appointments or descriptions of appointments;
  - (b) the circumstances in which a selection is made;
  - (c) the circumstances of the person to be selected;
  - (d) the purpose of the requirement to obtain approval or the purpose of the exception.
- (6) Provision within subsection (1)(b) may also (for example)—
  - (a) deal with the way in which selections made in reliance on section 10(3)(c) are to be made;
  - (b) specify terms and conditions that must be included in the terms and conditions of an appointment resulting from a selection made in reliance on section 10(3)(c).
- (7) Provision within subsection (1)(a) or (b) may confer discretions on the Commission or civil service management authorities.

**Commencement Information**

**I12** S. 12 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

**13 Complaints about competitions**

- (1) Subsection (2) applies if a person has reason to believe that a selection for an appointment has been made in contravention of the requirement in section 10(2).
- (2) The person may complain to the Commission about the matter.
- (3) The Commission—
  - (a) may determine steps that must be taken by a person before making a complaint (and those steps must be taken accordingly);
  - (b) must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;
  - (c) after considering a complaint, may make recommendations about how the matter should be resolved.
- (4) For the purposes of the investigation or consideration of a complaint, the following must provide the Commission with any information it reasonably requires—
  - (a) civil service management authorities;
  - (b) the complainant.

**Commencement Information**

**I13** S. 13 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)



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## 14 Monitoring by the Commission

- (1) The Commission must carry out whatever reviews of recruitment policies and practices it thinks are necessary to establish—
  - (a) that the principle of selection on merit on the basis of fair and open competition is being upheld in accordance with the requirement in section 10(2) and the recruitment principles, and
  - (b) that the requirement in section 10(2) and the recruitment principles are not being undermined in any way (apart from non-compliance).
- (2) For this purpose, civil service management authorities must provide the Commission with any information it reasonably requires.

### Commencement Information

**I14** S. 14 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

### *Special advisers*

## 15 Definition of “special adviser”

- (1) In this Chapter “special adviser” means a person (“P”) who holds a position in the civil service serving an administration mentioned below and whose appointment to that position meets the applicable requirements set out below.

### *Her Majesty's Government in the United Kingdom*

The requirements are—

- (a) P is appointed to assist a Minister of the Crown after being selected for the appointment by that Minister personally;
- (b) the appointment is approved by the Prime Minister;
- (c) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
- (d) those terms and conditions provide for the appointment to end not later than—
  - (i) when the person who selected P ceases to hold the ministerial office in relation to which P was appointed to assist that person, or
  - (ii) if earlier, the end of the day after the day of the poll at the first parliamentary general election following the appointment.

### *Scottish Executive*

The requirements are—

- (a) P is appointed to assist the Scottish Ministers (or one or more of the ministers mentioned in section 44(1)(a) and (b) of the Scotland Act 1998) after being selected for the appointment by the First Minister for Scotland personally;
- (b) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
- (c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.

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The reference above to the Scottish Ministers excludes the Lord Advocate and the Solicitor General for Scotland.

#### *Welsh Assembly Government*

The requirements are—

- (a) P is appointed to assist the Welsh Ministers (or one or more of the ministers mentioned in section 45(1)(a) and (b) of the Government of Wales Act 2006) after being selected for the appointment by the First Minister for Wales personally;
  - (b) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
  - (c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.
- (2) In subsection (1), in relation to an appointment for which the selection is made personally by a person designated under section 45(4) of the Scotland Act 1998 or section 46(5) of the Government of Wales Act 2006, the reference to the person who selected P ceasing to hold office as First Minister for Scotland or Wales (as the case may be) is to be read as a reference to the designated person ceasing to be able to exercise the functions of the First Minister by virtue of the designation.

#### **Commencement Information**

**I15** S. 15 in force at 11.11.2010 by [S.I. 2010/2703](#), [art. 2\(a\)](#)

## **16 Annual reports about special advisers**

- (1) The Minister for the Civil Service must—
  - (a) prepare an annual report about special advisers serving Her Majesty's Government in the United Kingdom, and
  - (b) lay the report before Parliament.
- (2) The First Minister for Scotland must—
  - (a) prepare an annual report about special advisers serving the Scottish Executive, and
  - (b) lay the report before the Scottish Parliament.
- (3) The First Minister for Wales must—
  - (a) prepare an annual report about special advisers serving the Welsh Assembly Government, and
  - (b) lay the report before the National Assembly for Wales.
- (4) A report under this section must contain information about the number and cost of the special advisers.

#### **Commencement Information**

**I16** S. 16 in force at 11.11.2010 by [S.I. 2010/2703](#), [art. 2\(a\)](#)

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### *Additional functions of the Commission*

#### **17 Agreements for the Commission to carry out additional functions**

- (1) The Minister for the Civil Service and the Commission may agree that the Commission is to carry out functions in relation to the civil service in addition to those given to it under the other provisions of this Chapter.
- (2) The Commission is to carry out those additional functions accordingly.
- (3) For the purposes of any additional function, civil service management authorities must provide the Commission with any information it reasonably requires.

#### **Commencement Information**

**I17** S. 17 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

### *Final provisions*

#### **18 Definitions etc**

- (1) In this Chapter—
  - “civil servant” is read as stated in section 1(4);
  - “civil service” is read as stated in section 1(4);
  - “civil service code” is defined in section 5(4);
  - “civil service management authority” means any person involved in the management of any part of the civil service;
  - “the Commission” is defined in section 2(1);
  - “diplomatic service” means Her Majesty's diplomatic service;
  - “diplomatic service code” is defined in section 6(2);
  - “function” includes power or duty;
  - “information” means information recorded in any form;
  - “recruitment principles” is defined in section 11(3);
  - “special adviser” is defined in section 15;
  - “special advisers code” is defined in section 8(4).
- (2) Subsection (3) applies for the purposes of sections 9(6), 13(4), 14(2) and 17(3).
- (3) No person may be required to provide information which the person could not be compelled to provide in civil proceedings before the High Court or the Court of Session.

#### **Commencement Information**

**I18** S. 18 in force at 11.11.2010 by S.I. 2010/2703, art. 2(a)

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## CHAPTER 2

### CONSEQUENTIAL AND TRANSITIONAL PROVISION

#### 19 Consequential amendments and transitional provision

Schedule 2 (which contains amendments consequential on this Part and transitional provision) has effect.

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#### Commencement Information

**I19** [S. 19](#) in force at 11.11.2010 by [S.I. 2010/2703](#), [art. 2\(a\)](#)

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**Changes to legislation:**

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