

PRIME MINISTER

RESPONSE TO THE TCSC REPORT ON "CIVIL SERVANTS AND MINISTERS:  
DUTIES AND RESPONSIBILITIES"

Mr. Luce's minute below adequately summarises the Responses proposed in the draft Command Paper to be presented to Parliament in your name as the Government's Response to this Report of the TCSC. But you will no doubt want to glance through the text of the draft Command Paper. The substance of the Responses represents a classic statement of the traditional relationship between civil servants and Ministers.

Mr. Luce proposes that the Response should be published on 22 July. 22 July may also see the publication of the Defence Select Committee's Report on Westland. This Report may well cover some of the same ground as the TCSC Report and the Government's Response; e.g. the responsibilities of Government Press Officers (paragraph 5.20 of the draft). But the coincidence of the publication of the two documents need not cause difficulty. Indeed, it could be helpful to have on the record on 22 July a firm traditional statement of the responsibilities of Ministers and civil servants. Mr. Luce and Sir Robert Armstrong should, however, consider the timing of publication further before a final decision is made to publish the Response on 22 July.

Are you content that the draft of the Command Paper should now be circulated to Ministers for comments with a view to publication on 22 July?

Yes and I will consult with the Chief Whip & Lord President

later in

N.L.W.

① It's not understood the last three lines of para 15 - I think they would be better deleted.

N. L. Wicks  
4 July 1986

- See various points I have marked in the text.





## MINISTER OF STATE, PRIVY COUNCIL OFFICE

PRIME MINISTER  

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The Seventh Report of the Treasury and Civil Service Committee, on civil servants and Ministers: duties and responsibilities, was published on 22 May.

2. The Report arose out of the Committee's decision that a Sub-Committee, under the chairmanship of Austin Mitchell MP, should conduct an inquiry into the relationship between Ministers and civil servants, with particular reference to the Note of Guidance which the Head of the Home Civil Service issued on 25 February 1985, shortly after the verdict in the Ponting case.

3. The Sub-Committee took evidence from a large number of individuals and organisations. Their conclusions were clearly much shaped by the views and advice of their two "expert advisers", Mr Andrew Likierman of the London Business School and Dr William Plowden of the Royal Institute of Public Affairs. It is evident, however, from the published proceedings of the Committee that the Committee had some difficulty in reaching a consensus on their conclusions, and this shows in the drafting of the Report, and the tentative nature of some of the conclusions.

4. I attach a draft response to the Committee's Report, which has been the subject of wide-ranging consultation with Departments. The main proposals in the Report and the responses proposed can be summarised as follows:

- i. You should, after some consultation with leaders of other political parties, formulate and publish guidelines





for Ministers, in parallel to Sir Robert Armstrong's guidance for civil servants, on their duties to Parliament and responsibilities for the Civil Service (paragraph 3.13).

→ Proposed response: The principles that should govern these matters are outlined in the response, but the Government does not believe that it is necessary or useful to go further than this and have a detailed note of guidance (paragraph 11).

ii. The Government "and other interested parties" should produce specific proposals on how the question of accountability (of civil servants to Ministers and of Ministers to Parliament) should be dealt with in future (paragraph 3.13).

→ Proposed response: Principles of accountability clearly restated; implications discussed; application in particular circumstances left for judgment at the time (paragraphs 13 to 15).

iii. Sir Robert Armstrong's note will do, so far as it goes, but should be "revised and expanded to cover a greater range of situations, and in greater detail", so as to "become, in effect, a code of ethics" and that he should enter into discussions with the Civil Service unions with a view to producing an agreed text of a new note of guidance (paragraph 4.11).

→ Proposed response: Sceptical, but agree to enter into discussions with the unions (paragraph 18).

iv. There should not (at any rate for the present) be an external appeal mechanism for civil servants faced with crises of conscience, but there should be a right of appeal





to the Head of the Home Civil Service for officials who have followed the procedures prescribed in his note of guidance but whose dilemmas remain unresolved (paragraph 4.16).

Proposed response: Agreed in principle; for discussion with the unions (paragraph 19).

v. Ministers should be able to play an active role in selecting the key officials who are going to work with them in planning and implementing their policies (paragraph 5.13).

Proposed response: Already adequately provided for 21-25 (paragraph 25).

vi. There should be regular infusions, temporary and permanent, of highly motivated people of proven ability into the higher Civil Service (paragraph 5.18).

Proposed response: Qualified agreement; much of this already in hand (paragraph 28).

vii. Ministers who require their press officers to do more than present and describe their policies should make political appointments (paragraph 5.20).

Proposed response: Disagreed; Government press officers can properly justify and defend (as well as present and describe) Government policies, in departmental but not in party political terms. (paragraph 29).

viii. Experiments should be conducted in expanding the traditional Ministerial Private Office into what the Committee calls a Ministerial Policy Unit, consisting of a number of special advisers, a number of career civil





servants and the Parliamentary Private Secretary: the purpose of establishing such a limit would be to strengthen the Minister, increasing his influence and control over his Department, and putting himself in a better position to participate in the collective decision-making of Cabinet (paragraphs 5.28 to 5.32).

Proposed response: No central initiative; gap between the Committee's thinking and actual practice may not be great; do not rule out further evolution of these arrangements in Committee's direction by individual Ministers who so wish (paragraph 35).

ix. There should as a matter of principle be a single Minister for the Civil Service with his own Department (the Civil Service Department) responsible for the management of the Civil Service (paragraph 5.38).

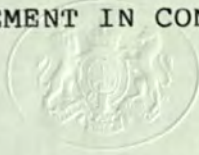
x. The posts of Secretary of the Cabinet and Head of the Home Civil Service should not be combined. The Head of the Home Civil Service should be a full Permanent Secretary, working to the proposed Minister for the Civil Service (paragraph 5.44).

Proposed responses: Disagreed. No change in existing arrangements at present time (paragraph 42)

5. There are obiter dicta on freedom of information and on the Official Secrets Acts, though the Committee acknowledge that they were not principally concerned to inquire into those subjects.

6. I should draw your attention particularly to the line I propose we should take on the Committee's "Policy Unit" proposal (item viii. above). Though I believe the Committee's proposal to have been insufficiently thought through, this is one on which much media attention has been focused and on which the





Government's response will be closely scrutinised. I think it is important that we should avoid giving too negative a response. The difference between what the Committee may have in mind and what actually happens on the ground may not be great. Moreover I am concerned that generally our response to this Report is likely to be seen as rather negative. I therefore think it important that we should not dismiss the concept out of hand, but openly recognise the possibility that, without there being any kind of central initiative, some Ministers may over time wish to move further in the Committee's direction, and that it may not cause serious harm if they do so.

7. The Government is normally expected to respond to reports of Select Committees within two months. To meet this timetable we should aim to publish a response on or about 22 July. If you are content with the draft, I should be grateful for your authority for me to circulate it on Monday 7 July for the comments and agreement of members of the Cabinet Ministers in charge of Departments and the Attorney General. I would ask for their comments and agreement by not later than 11 July, so as to allow for publication before the House of Commons rises for the Summer Recess, in the week beginning 21 July. I propose to aim at publication on 22 July. I hope you will be content that the Command Paper should be presented to Parliament by you, as Prime Minister and Minister for the Civil Service. I also propose that publication of the Command Paper should be announced by means of a Written Question and Answer.

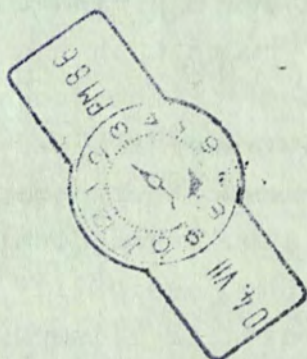
*Paul Thomas*

*MP* RICHARD LUCE

4 July 1986

*(approved by the Minister and signed in his absence)*





COMPANION

THE

WINDY



Draft of 4 July 1986

CIVIL SERVANTS AND MINISTERS

DUTIES AND RESPONSIBILITIES

Government Response to Seventh Report from the  
Treasury and Civil Service Committee

Session 1985-86

INTRODUCTION

The Government welcomes the Committee's Seventh Report, together with the memoranda and minutes of evidence taken by their Sub-Committee for the purpose of preparing the Report, as a contribution to the public discussion of a number of important and sensitive issues which lie at the heart of the exercise of government in a Parliamentary democracy and in a complex industrialised society.

2. This response is intended to be seen in the same light: as a contribution to a continuing discussion, not as the last word in an argument. For these issues are concerned not just with institutions, and relationships between institutions; they are very much concerned with relationships between people working together in a framework of political and administrative institutions, which themselves progress and develop, and in widely varying political contexts. They are not therefore issues on which there is likely to be <sup>complete</sup> general agreement, or even finality: political circumstances change - indeed governments change - and solutions which may seem appropriate in one context may be inadequate or inappropriate in others. The need is to



discern and identify the principles which ought to guide the people concerned as they exercise their judgments in dealing with particular situations and problems, rather than to try to generalise from particular situations and problems that have occurred and to prescribe detailed solutions for dealing with them in future.

#### DUTIES AND RESPONSIBILITIES

##### The Civil Service

3. There is one other general point to be made at the outset. The Committee's Report is relevant mainly to civil servants working at the centre of Government, advising Ministers on the formulation and execution of policy, and much of this response follows the Committee's Report in that respect. But the Civil Service as a whole is a much larger body of public servants - nearly 600,000 in all - engaged in an extremely wide variety of functions. In thinking about the one-half of one per cent of civil servants with whom the Report is primarily concerned, it is important not to lose sight of the diverse functions of other members of the Civil Service.

4. The Government has noted, and warmly endorses, the appreciation expressed by many of those who gave evidence to the Committee of the loyalty, devotion and professionalism with which civil servants carry out the duties placed upon them.

5. The Government recognises the particular pressures which have been created by its commitments to :

- (1) reducing the role of the state and the extent of its intervention in the affairs of the citizens;



(2) making sure that the activities that continue to be carried out within government are managed with the greatest possible efficiency and effectiveness;

(3) as a counterpart and consequence of these processes, reducing the size of the Civil Service.

6. The Committee's Report does not touch on the programme of management reform which has been going forward in the public service since 1979. Manpower has been reduced by nearly 20 per cent. There have been changes to ensure greater personal responsibility for financial management on the part of individual line managers in the Civil Service, fuller initial assessment of the objectives and costs of services and policies and more reviews of their effectiveness. The changes in management have required substantial changes in the attitude of civil servants to their work. It is a great credit to the Service, not just that the necessity for these changes has been accepted, but that the process itself has been positively espoused and is bearing fruit.

7. The Government notes with satisfaction that the Committee "have received no convincing evidence that the British Civil Service is being or has been politicised". This is entirely in line with the Government's conviction that the Civil Service has not been, is not being, and should not be allowed to become politicised. It reaffirms its belief in the importance, in the British system of parliamentary democracy, of maintaining a non-political professional Civil Service offering those who join it a career with the opportunity of rising to the highest levels. Only so, in the Government's view, will it be possible to maintain the standards of integrity, intelligence and skill which have characterised the British Civil Service and benefited the country for more than a hundred years.



8. The Committee have noted that they would find it helpful to have a clear definition of the Civil Service. As the Report notes, the Expenditure Committee made the same request in 1978 (HC (1976-77) 535-1). The Government's response (Cmnd 7117, paragraph 107) was as follows:

"There is in law no universally applicable definition of 'civil servant' or 'Civil Service'. The most important distinguishing characteristic is service on behalf of the Crown. The employees of bodies which do not in law have crown status (eg local authorities, nationalised industries) are not civil servants. Political, judicial and other Crown office holders whose terms and conditions of service are separately provided for are distinguished from civil servants, as are the Armed Forces and the Royal Household."

The Government cannot improve upon this definition, which (it will be noted) includes the Diplomatic Service and the Northern Ireland Civil Service, though these are separate from the Home Civil Service. It does not include employees of National Health Authorities, who are Crown servants but not civil servants.

9. The Government does not propose in this response to the Committee's Report to embark upon an elaborate disquisition on the constitutional significance of "the Crown". What Sir Robert Armstrong wrote in his note of guidance of 25 February 1985 ("the Armstrong memorandum"), the issue of which gave rise to the Committee's inquiry, was the subject of careful consideration, and the Government believes that it provides the right foundation on which to base the discussion of working relationships and their implications:

"Civil servants are servants of the Crown. For all practical purposes the Crown in this context means and is represented by the Government of the day ... The Civil



Service as such has no constitutional personality or responsibility separate from the duly elected Government of the day."

Ministers

10. Ministers are also servants of the Crown: with the difference, as the Committee recognises, that it is they who bear political responsibility and accountability. The Government agrees with the view that good government depends as much upon the integrity of Ministers and their accountability to Parliament, as upon the integrity of civil servants and their accountability to Ministers.

11. The Government believes that Ministers are well aware of the principles that should govern their duties and responsibilities in relation to Parliament and in relation to civil servants. It goes without saying that these include the obligations of integrity. They include the duty to give Parliament and the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or mislead Parliament or the public. In relation to civil servants, they include the duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; the duty to refrain from asking or instructing civil servants to do things which they should not do; the duty to ensure that influence over appointments is not abused for partisan purposes; and the duty to observe the obligations of a good employer with regard to terms and conditions of service and the treatment of those who serve them.

12. The Government does not believe that it is necessary to go further than this in defining the duties and responsibilities of Ministers - or indeed possible to do so without adding so many caveats, provisos, and saving clauses as greatly to limit the



value of the exercise as a detailed guide to conduct. Steps are, however, being taken to familiarise newly-appointed Ministers with the workings of Government Departments, to help them to contribute to the achievement of greater efficiency and better value for money, and to equip them to make the best use of the Civil Service resources available to support them.

### Accountability

13. The Government endorses the Committee's two basic propositions on accountability: that Ministers and not officials are responsible and accountable for policy; and that officials' advice to Ministers is and should remain confidential.

Constitutionally a Minister is responsible and accountable for all actions carried out by civil servants of his Department in pursuit of Government policies or in the discharge of responsibilities laid upon him by Parliament. The delegation of authority to managers at all levels, which is an important part of the Government's drive for more efficient and economic use of resources in the Civil Service, involves internal accountability within Departments and does not conflict in any way with the external accountability of the Minister to Parliament. Any attempt to make civil servants directly accountable to Parliament, other than the strictly defined case of the Accounting Officer's responsibility, would be difficult to reconcile with the Minister's responsibility for his Department and the civil servant's duty to his Minister.

14. This has implications for the position of civil servants in relation to Select Committees. Select Committees were established to examine the expenditure, administration and policy of Departments. The relevant powers of the Committees and the conventions that are accepted as applying are set out comprehensively in the First Report from the House of Commons Select Committee on Procedure (session 1977/8) and the memorandum by the Clerk of the House. The Report and the



memorandum recognise that civil servants who give evidence to Select Committees do so on behalf of their Ministers, that there are certain matters on which they cannot answer questions (notably, as the Committee's own Report states, on policy matters - which are for Ministers - and on advice given to Ministers) that - as the Report stated -

"it would not be appropriate for the House to seek directly or through its Committees to enforce its rights to secure information from the Executive at a level below that of the Ministerial Head of Department concerned, since such a practice would tend to undermine rather than strengthen the accountability of Ministers to the House";

and as the memorandum by the Clerk of the House stated -

"it would certainly appear more in accordance with Ministerial accountability to the House that Ministers should accept responsibility for the conduct of their offices and that the House should proceed against Ministers".

It is not in accordance with the Government's view of those conventions or with the underlying principles of Ministerial accountability that Select Committees should criticise individual civil servants who are, for the reasons already explained, unable to speak freely in their own defence.

15. It is impossible, and would be unwise, to try to lay down detailed guidelines about the implications of Ministerial accountability for individual conduct in particular situations: the variety of situations that can arise is infinite, and there must be room for the exercise of discretion and judgment having regard to particular circumstances. It has never been the case that a Minister was required or expected to resign in respect of any and every mistake made by his Department, though he is



clearly responsible to Parliament for ensuring that action is taken to put matters right and prevent a recurrence. The principle is clear: the Minister is accountable to Parliament for the policies and actions of his Department. The implications of applying that principle are a matter of judgment in each case, including the political judgment whether the Minister retains the confidence of his Ministerial and Parliamentary colleagues.

#### QUESTIONS OF PROCEDURE

##### The Armstrong Memorandum

16. As to the duties and responsibilities of civil servants in relation to Ministers, the Government reaffirms the principles set out in the Armstrong memorandum; indeed the Committee themselves accept the validity of those principles. The question that remains is whether, in the matter of procedures, the memorandum goes far enough and whether it is possible to define more specifically some of the situations that may arise and to prescribe for them.

17. The Government does not believe that the cases referred to by the Committee demonstrate that the procedures set out in the Armstrong memorandum are inadequate. In particular, in Mr Ponting's case, it is not just that the Armstrong memorandum had not been issued at the relevant time: the fact is that Mr Ponting did not follow those procedures and did not take his specific problem either to his Permanent Secretary or to the Head of the Home Civil Service. When questioned on this matter by the Committee, Mr Ponting indicated that he had decided that there was no point in approaching his Permanent Secretary formally because, he assumed, the Permanent Secretary was already aware of his views through previous discussions. Mr Ponting would have been better placed to reach a conclusion if he had approached his Permanent Secretary formally with his



specific problem. Instead he chose to ventilate his grievances by means of anonymous letters while he continued to occupy a position of high trust.

18. The Government is not convinced that it is desirable or indeed practicable to specify situations and prescribe procedures in more detail than the Armstrong memorandum already does. Sir Robert Armstrong has however agreed, following a request from the Council of Civil Service Unions, to enter into discussions on this matter. Those discussions have been awaiting the Committee's Report.

#### An Appeals Mechanism

19. The Government agrees with the Committee in the view that an external appeals mechanism would not be desirable. In particular it is the view of the Government that the institution of a Parliamentary Commissioner or Inspector General for the Civil Service, of the kind suggested by the FDA or Sir Douglas Wass, could adversely affect the relationships between Ministers and civil servants. But the Government accepts in principle the Committee's recommendation that the Head of the Home Civil Service should be prepared personally to consider appeals from officials who have followed his procedures but whose crises of conscience remain unresolved. This right of appeal would be intended primarily to deal with "crisis of conscience" cases - where (for instance) a civil servant is asked or instructed to do something which for him or her raises a fundamental issue of conscience; it would not be intended to be available in disciplinary cases and other personnel management matters where the Permanent Secretary of the Department concerned will remain the final authority. There would also need to be some safeguard against the risk of merely frivolous or vexatious appeals to the Head of the Home Civil Service. The arrangements and procedures for this right of appeal will be one of the subjects for discussion in the course of Sir Robert Armstrong's consultations



with the representatives of the Civil Service unions.

20. It will be for separate consideration whether there should be similar rights of appeal for members of the Diplomatic Service and for members of the Northern Ireland Civil Service to the respective Heads of their Services.

#### MINISTERS AND THE CIVIL SERVICE

##### Senior Appointments

21. The Committee make a number of points in the section of their Report headed "Ministers and the Civil Service". The first is that "Ministers should be able to play an active role in selecting the key officials who are going to work with them in planning and implementing their policies".

22. The Committee's words here leave room, perhaps intentionally, for a good deal of flexibility of interpretation. The Government believes that the Committee do not contemplate, any more than the Government would, a wholesale change of staff in the higher levels of the Civil Service upon a change of Government or Minister. Nonetheless, the Government believes that the wording of this recommendation carries a significant risk of increasing politicisation, which (like the Committee) the Government wishes to avoid. It therefore takes a somewhat different position.

23. The Government considers that the maintenance of the Civil Service as a career service is in the public interest. With a career service, the assumption must be that civil servants give unstinting and loyal service to the Government of the day and that an incoming Minister accepts and works with those whom he finds in the established Civil Service posts (special advisers and policy units are discussed later in this response). Any other assumption would inject an unacceptable degree of



uncertainty into appointments in the higher Civil Service. In the rare event that a Minister finds that he cannot work reasonably with a particular official in a key position, it is open to him to propose to the Permanent Secretary (or to the Prime Minister or the Head of the Home Civil Service, if the official concerned is the Permanent Secretary) that the official should be moved from that position. The subsequent discussion takes account of the various considerations involved, and it is usually possible to resolve the situation satisfactorily, given a degree of good will on all sides. The Government does not believe that it is possible to go further than this to provide in advance for a situation which arises only very seldom.

24. When a vacancy occurs in the ordinary course of business, as a result of a retirement or a posting, in a Grade 1 or Grade 2 post, the Minister in charge of the Department is always consulted and can expect to be able to have an active influence on the choice of the successor, though the appointment is ultimately made with the approval of the Prime Minister. Appointments at Grade 3 do not require the Prime Minister's approval, but the Permanent Secretary will consult the Minister concerned in the normal course of business before appointments are made to posts in this grade whose incumbents are regularly in contact with Ministers and to other key posts in this or other grades.

25. The Government believes that these arrangements enable departmental Ministers to play an appropriately active role in the selection and appointment of senior officials.

#### Appointments From Outside

26. The Committee's second point in this section is that "there should be regular infusions, temporary and permanent, of highly motivated people of proven ability into the higher Civil



Service". The Committee commends the "more structured and yet more flexible arrangements for movement in and out of the public service" which they understand to be a feature of the French system.

27. The arrangements in the French system are (as the Committee implicitly recognise) part and parcel of a different administrative system and a different set of relationships between the public service and the private sector from those which exist in this country; and it would be difficult to adopt one feature of the French system without others, for example in relation to business appointments for those leaving the public service. The Government notes in passing that some of the Committee's recommendations in its earlier Report on business appointments would make for less rather than more flexibility in these matters.

28. The Government believes that the objective should be that the Civil Service should be capable of furnishing people with all the qualifications and expertise likely to be required in the public service, and that recruitment to and training in the Civil Service should be so organised as to achieve this objective. This objective also served by the policy of encouraging increased interchange between the public and private sectors, which helps to increase experience and improve understanding between the two sectors and promote the development of outward-looking attitudes in the public service. An important element in this policy is an expanding programme of secondments in both directions between the Civil Service and industry, commerce and other outside bodies, amounting to a total of 900 secondments in and out in 1985, in addition to joint training arrangements, unpaid non-executive directorships and other arrangements for exchanging experience. The Government fully supports this programme as a further means of expanding the experience of the permanent Civil Service, and would like to see the number of such exchanges increase. But



there will continue to be, as there have been in the past, cases where the Civil Service cannot meet a particular requirement at a particular time, and in such cases it is necessary and appropriate to bring somebody in from outside the Civil Service. Between 1979 and 1985, some 80 appointments were made from outside the Civil Service at Grade 3 and above. The arrangements for such appointments should be, and are designed to be, such as to ensure that they are made not on political considerations but strictly on the requirements of the appointment and the qualifications and expertise of the person to be appointed. The objective must be to make the best possible appointment in the circumstances, without regard to political considerations, in accordance with the Civil Service Commissioners' requirements.

#### Press and Information Officers

29. Dealing with press and information officers, the Committee propose that "Ministers who require their press officers to do more than present and describe their policies should make political appointments". In practice it is very difficult to draw a sharp line between "presenting and describing" and "justifying and defending" policies. The Government's view is that the correct distinction is between the policy of the Government as such and the party political dimensions of that policy; and that a Civil Service departmental press officer is in exactly the same position as any other civil servant: he may properly be called upon to present and describe the policies of the Minister, and to put forward the Minister's justification and defence of these. He may not properly be called upon to justify or defend those policies in party political terms, or expressly to advocate policies as those of a particular political party. A Minister who wishes to present his policies in a party political dimension has other means and channels available to him for doing so. A Civil Service departmental press officer who is asked or instructed by his Minister to



behave in a manner which oversteps this line should consult his Permanent Secretary.

Special Advisers and "Cabinets"

30. The Committee propose the institution of an expanded Ministerial Private Office, which they describe as a Minister's Policy Unit, which would consist of his Parliamentary Private Secretary, to keep the Minister in touch with backbenchers, a group of civil servants, to keep the Minister in touch with his Department and to give advice, and a number of Special Advisers, to keep him in touch with his party organisation and to give policy advice.

31. Under present arrangements a Minister in charge of a Department may have a Parliamentary Private Secretary, a Private Office, and one or two Special Advisers; the functions of the three are distinct and different, though there needs to be good co-ordination and co-operation between them. There would be no constitutional difficulty about an experiment in formalising and extending these arrangements on the lines envisaged by the Committee, provided that, as the Committee propose, numbers working in the unit were limited in the interests of efficiency and containing costs. It would also be necessary that such an arrangement should not insulate Ministers from the advice of their permanent civil servants or cut across the Permanent Secretary's overall accountability to the Minister for the effective implementation of the Minister's policies and management of the Department.

32. But the Government considers that in reading across from "cabinet" systems in other countries the Committee have taken too little account of the extent to which Ministers of State and Parliamentary Secretaries play a role in the British system of government. In nearly all Departments there are at least two or three - in some cases as many as six or seven - Ministers



besides the Minister in charge of the Department. These Ministers share the burden of Parliamentary and departmental work, and are an experienced and responsible source of political advice and support for the Minister in charge of the Department.

33. The policy advice role of Special Advisers covers two different functions. The first is to assist the Minister in determining his policies as a departmental Minister: in this capacity the Special Adviser provides a complementary source of advice to that provided by the civil servants, with special reference to the party political dimensions of the policy. The second is to provide the Minister - and particularly the Cabinet Minister - with advice on matters which may be discussed in Cabinet or Cabinet Committee but in which his Department has no direct concern and no obvious capacity or qualification to provide advice. The first of these functions, with its specifically party political dimension, cannot readily be undertaken by a civil servant; the second can be, and often is, though (as the Committee recognises) this should be an episode in a civil servant's career from which he subsequently returns to normal departmental work.

34. The number of Special Advisers which is appropriate depends upon the size of the Department and the range of its responsibilities, as well as upon the Minister's assessment of what he can use to advantage. The Government believes that, in an ordinary Department, the number of such advisers should seldom exceed one, and that, as a general rule, only Cabinet Ministers (and in exceptional cases other Ministers in charge of Departments) should need a Special Adviser. To ensure a reasonable degree of consistency in practice, the Prime Minister's approval should continue to be required for the employment of Special Advisers. They are invariably from outside the Civil Service, and should therefore continue to be appointed for terms which expire with the end of the administration under which they are appointed, when there is a

*in how many departments do they exceed one*



General Election, or with the departure of the Minister by whom they are appointed. They should continue to be subject in general to Civil Service Conditions of Service.

35. The Government has found the present arrangement satisfactory, whereby the functions of the Private Office, Special Adviser and Parliamentary Private Secretary are organisationally separate (though with an appropriate degree of co-ordination and co-operation between them and with the key civil servants in the Department); and it recognises that some Ministers in charge of Departments may prefer to have no Special Adviser but to rely on the other Ministers in their Department and on their Parliamentary Private Secretaries for the specifically political input into the advice available to them. The "Policy Unit" proposed by the Committee suggests another possible way in which the support directly available to a Departmental Minister could be organised. The Government considers that more thought needs to be given to the functions of such a Unit and to its relationship to the rest of the system. For instance, if it is intended to have an independent input into policy formulation, its relationship, and that of the individuals comprising it, to the Permanent Secretary and the executive parts of the Department will need extremely careful definition. And, if it is intended as no more than an aid to the Minister in ensuring that Departmental policies are energetically pursued and followed up, it is not clear whether there is any great advantage in what would be little more than a formalisation of arrangements which already exist in many Departments. Indeed it is not clear how far its role is intended to, or should, differ from the existing structures. In fact, there may not be a substantial gap between the arrangements as they have evolved within many Ministers' offices and the thrust of the views expressed by the Committee. The Government does not propose to take a central initiative to launch an experiment on the lines suggested, but does not rule out the possibility of further evolution of



existing arrangements in the direction which the Committee may have in mind. There may be scope for the further development of existing arrangements by interested Ministers (subject to detailed discussion with their Permanent Secretaries and as necessary with the Prime Minister).

#### Managing the Civil Service

36. The Committee propose that there should be a single Minister for the Civil Service, with a Department for the Civil Service, whose Permanent Secretary should be the Head of the Home Civil Service.

37. The Government does not believe that that there is a uniquely and universally right way to organise the various functions that are carried out at the centre of Government - those now carried out by the Treasury and the Cabinet Office (including the Management and Personnel Office). What the organisation should be at any given time will depend on the policies and priorities of the Government of the day, and on the particular personalities involved. Until 1968 the Treasury undertook the responsibilities of central management of the Civil Service, and the Permanent Secretary to the Treasury (or the Joint Permanent Secretary responsible for that side of the Treasury) was the Head of the Home Civil Service. From 1962, however, the management side of the Treasury was largely separate from the rest, and by the time of the Fulton Report in 1968 the retention of responsibility for Civil Service management in the Treasury had come to be felt to be unsatisfactory. The Civil Service Department was therefore set up in 1968. It was essentially a new Department created out of the former Management side of the Treasury: it was responsible for all aspects of central management of the Civil Service, and its Permanent Secretary was the Head of the Home Civil Service. It is this arrangement which the Committee propose should be recreated, though it was found not to be wholly satisfactory,



particularly in respect of the divorce of responsibility for Civil Service pay and manpower from the Treasury's general responsibility for the central management of expenditure.

38. So a number of arrangements have been tried; and others would no doubt be possible. In the Government's view, however, the reasons which led to the creation of the present arrangements in 1981 remain valid. Moreover, these arrangements have been in existence for less than five years, and frequent institutional change is apt to produce more by way of disadvantage from the effects of disruption than by way of advantage in terms of improved policy formulation or execution.

39. The Government also continues to see a strong case for the Prime Minister, with her overall central responsibility for the co-ordination of Government policies and the management of Government, to be the Minister for the Civil Service - as successive Prime Ministers have always been, either as First Lord of the Treasury or more recently as Minister for the Civil Service - with whatever support for day-to-day Ministerial involvement is appropriate. At present this support is provided by the Minister of State, Privy Council Office, who is responsible under the Prime Minister for the organisation, management and overall efficiency of the Home Civil Service and for policy on recruitment, training and other personnel management matters; and by the Minister of State, Treasury, who is responsible under the Chancellor of the Exchequer for civil service pay and conditions.

40. As to the position of Head of the Home Civil Service, the Government notes the Committee's view that there is "very much a full-time need for one who will make his prime concern the restoration of morale " in the Civil Service. The maintenance of morale is not, however, a matter for one civil servant; and it would in the Government's view be mistaken to set up a system which implied that it was. It is a matter for all Permanent



Secretaries and indeed other senior management. It is necessary also to have regard to the fact that because of their relationship to Ministers neither the Head of the Home Civil Service nor other Permanent Secretaries can take up a public position in advocating the interests of the Civil Service, if to do so would appear to put them in conflict with the Government of the day. For this reason the Prime Minister, as Minister for the Civil Service, and all Ministers in charge of Departments share a responsibility for the maintenance of Civil Service morale. In short, it is a matter for the Government as a whole.

41. The current arrangement, under which the post of Head of the Home Civil Service is combined with the Secretaryship of the Cabinet, has clear benefits. The Secretary of the Cabinet, although not "the Prime Minister's Permanent Secretary", is of all the Permanent Secretaries the closest to the Prime Minister. As Permanent Secretary for the Cabinet Office (including the Management and Personnel Office), he is responsible to the Minister of State, Privy Council Office, and to the Prime Minister for the matters for which she has particular responsibility as Minister for the Civil Service. He also sees many of the senior staff in action and is therefore in a good position to advise the Prime Minister, as Minister for the Civil Service, on Grade 1 and 2 appointments. As to the matter of the load of work, the Government believes that, provided that the incumbent delegates sensibly, his burden is manageable.

42. Against this background the Government seeks no grounds for changing the existing organisation at the present time.

#### OPEN GOVERNMENT

43. In the last section of its Report, the Committee make certain comments on freedom of information and on the Official Secrets Acts.



Freedom of Information

44. As to freedom of information, it remains the policy of the Government to make publicly available as much information as possible, consistent with the requirements of the preservation of national security, of the protection of international relations, of financially or economically sensitive information, and of commercial and personal information entrusted to it in confidence, and with the requirements of orderly Government. The establishment of Departmental Select Committees in 1979 has encouraged a climate in which far more information is being made available by Government Departments than ever before. The Government is not convinced that legislation giving individuals new statutory rights of access to Government information is needed, or that it would make for more effective Government. It agrees with the Committee that advice of civil servants to Ministers should remain confidential. Given that advice of civil servants to Ministers would be exempt from a statutory duty of access to information, the Government doubts whether freedom of information legislation would much affect relations between Ministers and their officials one way or the other.

Official Secrets

45. Section 2 of the Official Secrets Act 1911 prohibits the unauthorised disclosure by a Crown servant of information that he has obtained through his official position. A leak by a civil servant that is designed to frustrate the policies or actions of a Minister would be one form of unauthorised disclosure; and the Government agrees with the Select Committee that such a disclosure cannot be regarded as justified.

46. Responsibility for deciding whether or not to institute proceedings under the Act rests with the Attorney General in his capacity as a Law Officer (not as a member of the Government). He has made clear that he will continue to exercise his



discretion in this matter in accordance with the criteria applicable to all prosecutions that he has made public. The unauthorised disclosure of information is also a serious breach of the Civil Service Code of Conduct. A civil servant against whom criminal proceedings are not instituted could be subject to internal disciplinary procedures.

47. The Government introduced a Bill when it came to office in 1979 to reform Section 2 of the Official Secrets Act 1911. The Protection of Official Information Bill was broadly based on the recommendations of the Franks Committee, which reported in 1972. The Bill would have replaced Section 2 with new provisions designed to protect certain specified classes of official information from unauthorised disclosure. There was, however, insufficient agreement, mainly about precisely what categories of information should be protected by the criminal law, to enable the Government to carry the Bill through Parliament.

48. The Government has noted the views of the Treasury and Civil Service Select Committee, and will continue to listen to views expressed on this subject. But it does not believe that it is any more likely now than in 1979 that a measure could be devised defining the information which genuinely needs protection and specifying who has the right to apply the definition to particular information which would be broadly acceptable. Accordingly, the Government has no plans at present to introduce legislation on the protection of official information. Unless and until such legislation can be introduced with a sufficient degree of support, the Official Secrets Acts remain in place as the law of the land.