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Special advisers

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Summary

Special advisers are temporary civil servants, employed to help Ministers on political matters where it would be inappropriate for permanent civil servants to become involved. They can provide political assistance in a way that the permanent civil service cannot. The role of special advisers is subject to regular scrutiny, with an ongoing debate around their work, numbers and cost.

As of December 2017, there were 88 special advisers working across the whole of Government. The pay bill for special advisers for 1 April 2016-31 March 2017 was £7.3 million. In addition, £1.5 million was spent on severance pay.

The numbers of special advisers fluctuate; annual lists of special advisers are published by the Cabinet Office. The number of special advisers was higher during the Coalition Government between 2010-2015. In November 2014, there were 103 special advisers in post – the highest there have been since the Government began releasing annual figures.

Special advisers most comply with the *Code of Conduct for Special Advisers*. This sets out the guidance and rules for the work of special advisers. The most recent version of the Code was published on 21 December 2016.

1. The role of special advisers

Summary

Special advisers are temporary civil servants employed by the Government to help ministers on political matters which it would be inappropriate for permanent civil servants to become involved. Special advisers are subject to the *Civil Service Code*, but are exempt from the general requirement that civil servants should behave with political impartiality and objectivity. Special advisers are also subject to the *Code of Conduct for Special Advisers*.

1.1 What is a special adviser?

[Section 10\(3\)\(b\) of the *Constitutional Reform and Governance Act 2010*](#)

exempted special advisers from the merit-based appointment principle that the Act applied to the civil service. A 'special adviser' is defined in [section 15 of the Act](#) as "a person holds a position in the civil service serving (the UK, Scottish or Welsh Governments) and whose appointment to that position meets the applicable requirements set out below".¹

These requirements are:

- (the special adviser) is appointed to assist a Minister of the Crown after being selected for the appointment by that Minister personally;
- the appointment is approved by the Prime Minister;
- 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;

Special advisers are subject to the *Code of Conduct for Special Advisers*. The Code sets out a special advisers' role, noting that they are a "critical part of the team supporting ministers" as they "add a political dimension to the advice and assistance available to Ministers".² The Code also notes that Special Advisers reinforce the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support:

... They can help Ministers on matters where the work of government and the work of the government party overlap and where it would be inappropriate for permanent civil servants to become involved. They are appointed to serve the Prime Minister and the Government as a whole, not just their appointing Minister.

Special advisers' employment ends at the end of the Administration which appointed them or when the appointing Minister leaves the Government, or moves to another appointment.

² Cabinet Office, [Code of Conduct for Special Advisers](#), December 2016, paras 1-2

Five separate documents collectively set the framework within which special advisers operate:

- [Code of Conduct for Special Advisers](#);
- [Model Contract for Special Advisers](#);
- [Civil Service Code](#);
- [Ministerial Code](#);
- Part 1 of the [Constitutional Reform and Governance Act 2010](#)

Box 1: Role of Special Advisers: Excerpt from the Code of Conduct for Special Advisers

In order to provide effective assistance to Ministers, special advisers should work closely with the ministerial team and with other civil servants, and establish mutual relationships of confidence and trust. Among other things, special advisers may:

- give assistance on any aspect of departmental business, and give advice (including expert advice as a specialist in a particular field);
- undertake long term policy thinking and contribute to policy planning within the Department;
- write speeches and undertake related research, including adding party political content to material prepared by permanent civil servants;
- liaise with the Party, briefing party representatives and parliamentarians on issues of government policy;
- represent the views of their Minister to the media (including a party viewpoint), where they have been authorised by the Minister to do so; and
- liaise with outside interest groups (including those with a political allegiance).

In working with other civil servants, special advisers can, on behalf of their Minister:

- convey to officials Ministers' views, instructions and priorities, including on issues of presentation. In doing so, they must take account of any priorities Ministers have set;
- request officials to prepare and provide information and data, including internal analyses and papers;
- hold meetings with officials to discuss the advice being put to Ministers; and
- review and comment on – but not suppress or supplant – advice being prepared for Ministers by civil servants.

But special advisers must not:

- ask civil servants to do anything which is inconsistent with their obligations under the Civil Service Code or behave in a way which would be inconsistent with standards set by their employing department;
- authorise expenditure of public funds or have responsibility for budgets;
- exercise any power in relation to the management of any part of the Civil Service, except in relation to another special adviser; or
- otherwise exercise any statutory or prerogative power.³

³ *Ibid*

1.2 Management of special advisers

Both the *Ministerial Code* and *Code of Conduct for Special Advisers* make clear that the management and conduct of special advisers, including discipline, rests with the Minister who made the appointment. This was a recommendation of the Committee on Standards in Public Life in 2003.⁴ The 2018 *Ministerial Code* states: “Individual Ministers will be accountable to the Prime Minister, Parliament and the public for their actions and decisions in respect of their special advisers.”⁵

The Public Administration Select Committee (PASC) held an inquiry in 2012 which considered the role of special advisers, particularly in the context of coalition government. Its report [Special Advisers: in the Thick of It](#) was published in October 2012.⁶ The report highlighted ministers’ responsibility for special advisers, and the importance of permanent secretaries being “guardians of propriety” with regard to relationships between ministers and special advisers.⁷

The House of Lords Constitution Committee published a report, [The accountability of civil servants](#), in November 2012 which touched on the role of special advisers, also concluding that “ministers are responsible for the actions of their special advisers” and have a duty to ensure that their advisers abide by the Code of Conduct at all times.⁸

⁴ Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service* 8 April 2003

⁵ Cabinet Office, [Ministerial Code](#), December 2018, para 3.3

⁶ HC 134 2012-13

⁷ Summary *ibid*

⁸ HL 61 2012-13

2. Number and cost

Summary

There were 88 special advisers in post in December 2017. There were higher numbers under the Conservative Liberal Democrat Coalition attributed to the support for the Liberal Democrats during the Coalition period. There are no statutory limits on the number of special advisers but successive editions of the *Ministerial Code* have restricted the numbers that most ministers can appoint. The pay bill for special advisers for the financial year 2016-17 was £7.3 million.

2.1 Number

How many special advisers are there?

There were 88 special advisers in post in December 2017.⁹ This compared to 83 in post in December 2016.

In November 2014 there were 103 special advisers in post, the highest there had been since UK governments have been releasing transparency figures. This higher figure has been attributed to the support for the Liberal Democrat ministers during the 2010-15 Coalition Government. Francis Maude, then Cabinet Office Minister, had told the Public Administration Committee in June 2012 that there had been an increase in special adviser numbers under the Coalition which reflected the “unusual circumstances of a coalition”.¹⁰ An article for the IfG also attributed the reduction in numbers under the Conservative Government to the end of Conservative Liberal Democrat Coalition, arguing that

partway through the last Parliament, a number of additional Liberal Democrat spads were appointed to support the Deputy Prime Minister and beef up the Liberal Democrat presence in Conservative-led departments; clearly there is no need to directly replace their posts.¹¹

Under section 6 of the *Constitutional Reform and Governance Act 2010* the Government is required to release an annual report on special advisers, including the number in post. However, because the figures are released annually, the statistics are not kept up to date through the course of the year.

Split between No. 10 and Departments

The ratio of special advisers employed by the Prime Minister and those employed in other departments has remained broadly consistent outside the years of the Coalition Government. The ratio has been approximately 1:2 from 2015-2017, and between 2008-2010.

⁹ Cabinet Office, [Special Adviser Data Release, Numbers and costs](#), December 2017

¹⁰ HC 134 2012-13 Q105

¹¹ Institute for Government, [Ministers reflect: on special advisers](#), 18 December 2015

Limits on the number of special advisers

There is no statutory limit on the number of special advisers, but successive editions of the *Ministerial Code* have restricted the number of special advisers that most ministers can appoint. The 2018 *Ministerial Code* states that:

With the exception of the Prime Minister, Cabinet Ministers may each appoint up to two special advisers. The Prime Minister may also authorise the appointment of special advisers by Ministers who regularly attend Cabinet.¹²

The [July 2001](#) and [July 2005](#) versions of the Code stated that the “Prime Minister may also authorise the appointment of one or two Special Advisers by Ministers who regularly attend Cabinet”. The May 2010 and October 2015 versions contained the following:

The Prime Minister may also authorise the appointment of one special adviser by Ministers who regularly attend Cabinet. Where a Minister has additional responsibility additional advisers may be allowed.¹³

The [Coalition Programme for Government of May 2010](#) promised to “put a limit on the number of Special Advisers”.¹⁴ But as the Institute for Government highlighted, “Once in government...they realised that this was an impractical suggestion, primarily because working in coalition meant a different way of working. The Liberal Democrats had too few advisers and this hampered the flow of information and communication across government. So the pledge was reversed”.¹⁵

The revised *Ministerial Code*, published in May 2010, provided for the first time for the Deputy Prime Minister to appoint more than two special advisers. Nick Clegg was appointed to the Office of Deputy Prime Minister in May 2010 and initially had between four and five special advisers.¹⁶ However, this had increased to 13 in the 9 December 2011 data and then further this increased to 20 in November 2014. This reflected the Deputy Prime Minister’s desire to ensure a Liberal Democrat presence in Conservative-led departments. Alongside his regular special advisers, the Deputy Prime Minister’s other special advisers were sub-categorised as those based in Number 10 and those based in Departments.

Reference to the Deputy Prime Minister was removed from the *Ministerial Code* published in October 2015 and has not appeared in subsequent updates.

The restriction that Ministers may appoint two special advisers was first begun by Harold Wilson.¹⁷

¹² Cabinet Office, *Ministerial Code*, December 2017

¹³ National Archives, *Ministerial Code*, May 2010

¹⁴ [The Coalition Programme for Government](#), May 2010

¹⁵ The Institute for Government, [We need to talk about special advisers](#), 19 December 2014

¹⁶ See data releases on special advisers from October 2010 to July 2011.

¹⁷ Yong and Hazell, *Special Advisers*, p140

Other sources of advice for ministers

Time-limited civil service appointments

The informal cap on special adviser numbers has been circumvented at various times by appointing individuals as “time-limited civil servants”. The Civil Service Recruitment Principles have several exemptions to the broad principle of appointment through fair and open competition. One of these exemptions allows for the appointment for a time limited period when there is a pressing need. Ben Yong, now lecturer at the University of Hull, and Professor Robert Hazell, University College London, have labelled these time-limited civil servants as “policy advisers”. They have noted that their numbers, role and work are “murky at best”:

Some interviewees stated that policy advisers did follow the *Civil Service Code* and remained politically impartial. Other interviewees said that policy advisers were special advisers in all but name, being treated as such by both the minister and those around the minister.¹⁸

Extended Ministerial Offices

The adoption of Extended Ministerial Offices by the Coalition Government in 2013 saw a further exemption added to the Recruitment Principles. External appointees were allowed to be appointed as temporary civil servants without an open competition for a period of up to five years. However, the Civil Service Recruitment Principles explicitly stated that such external appointees were bound in full by the *Civil Service Code*, including the requirement for political impartiality and objectivity (unlike special advisers).¹⁹ Extended Ministerial Offices are currently being disbanded.

Council of Economic Advisers

From 2010 to 2015 the Special Adviser data releases published by the Cabinet Office referenced the Council of Economic Advisers as appointees by the Chancellor of the Exchequer in addition to his special advisers. There is no reference to the Council in data published from December 2016 onwards.

A number of written Parliamentary questions were asked in early 2016 about the members and remuneration of the Council of Economic Advisers, the replies to which generally directed the MP to the December 2015 data published by the Cabinet Office.²⁰

A press article from September 2017 announced that JP Morgan had appointed Karen Morgan, “chair of the council of economic advisers for the Chancellor of the Exchequer, as chief market strategist for Europe and UK”.²¹ Ms Ward had been listed in the December 2016 data release as a special adviser to the Chancellor, but no reference was made to the Council of Economic Advisers.

¹⁸ Yong and Hazell, *Special Advisers*, p143

¹⁹ Civil Service Recruitment Principles April 2015 Appendix A, Exception 4

²⁰ See for example: [PQ 21112](#)

²¹ Money Marketing, [JP Morgan hires Chancellor's key adviser as chief market strategist](#), 11 September 2017

Unpaid advisers

Although most attention has been focused on the role of special advisers, the *Ministerial Code* also makes passing reference to the appointment of unpaid advisers. The 2005 version of the Code included more detailed information on unpaid advisers but the 2010 *Ministerial Code* simply stated that the limit of two special advisers for Ministers could be either paid or unpaid. There is no specific reference to unpaid advisers in subsequent versions of the Code.

Towards the end of 2016 Tom Watson asked a number of Parliamentary questions relating to unpaid advisers in the Department of Culture, Media and Sport. In response to a question asked on 26 October 2016, Mr Watson was told that there were 93 unpaid advisers in the Department.²²

2.2 Cost

Cost of the financial year 2016-17

The pay bill for special advisers for the financial year 2016-17 was £7.3 million. This has been broken down as follows:

- the pay bill for 1 April 2016 – 13 July 2016 was £2.4 million;
- the pay bill for the period 13 July 2016 – 31 March 2017 was £4.9 million.

In addition, £1.5 million was paid in severance pay.

Severance pay

Special advisers are contractually entitled to a certain level of severance pay, depending on their length of service, as set out in the [Model Contract for Special Advisers](#). This is because special advisers are personally appointed by their minister, and their tenure is usually limited to that of the minister they serve or to the day following a general election. As a result, the loss of their job or position is often sudden and it is not possible to give them warning that their contract is being terminated.

In July 2016, the outgoing Prime Minister, David Cameron, decided that certain special advisers should be awarded a higher amount of severance pay than their contracts allowed for. According to [a letter from the Downing Street Principal Private Secretary](#), this was to take account of the “loyal and dedicated service that has been provided to him over the past six years by his team of Special Advisers”, and because he was “conscious that the situation they find themselves in is through no fault of their own”.²³

According to the [Cabinet Office Permanent Secretary’s letter to the Downing Street Principal Private Secretary](#), the total cost of the proposed severance package for Special Advisers within Downing

²² [PO 50339, 26 October 2016](#)

²³ Cabinet Office, Correspondence: special advisers severance pay, [Request for a ministerial direction: the Cabinet Office Permanent Secretary writes to the 10 Downing Street Principal Private Secretary](#), 12 July 2016

Street, i.e., their contractual entitlement, was £747,045. Increasing the severance to six months for those with long service “would cost an additional £282,892, leaving a total severance package of £1,029,938”.²⁴

The Cabinet Office Permanent Secretary took the view that there was no case for awarding higher sums of money than those for which the contract allows for; and his “strong advice” was that “we continue to abide by the provisions in their contracts of employment”.²⁵ However, he recognised “the Prime Minister’s wish is for us to provide greater recognition for long service, and award six months’ salary for those Special Advisers with long service who were re-appointed post-Election”. He therefore requested a ministerial direction to make the payments, if the Prime Minister still wished to do so.

In response, the Downing Street Principal Private Secretary said the Prime Minister “noted” the Permanent Secretary’s concerns, but was “mindful of the loyal and dedicated service that has been provided to him over the past six years by his team of Special Advisers, and he is conscious that the situation they find themselves in is through no fault of their own”.²⁶

A ministerial direction was issued by the then Prime Minister, instructing the Cabinet Office Permanent Secretary to “proceed”. Severance was to be calculated based on six months’ salary for each of the eligible individuals. This approach was “to be applied across Government”.²⁷

2.3 Calls for a cap on the number of special advisers

There have been calls over the years for the number of special advisers to be capped, although there is not a consensus that this would be desirable.

In 2000 the Neill Committee on Standards in Public Life recommended a cap on the overall number of special advisers,²⁸ and the Blair Government accepted the need for a cap, in the context of legislation on the civil service, stating:

The Government accepts that an overall limit on the number of special advisers should be included in Civil Service legislation. Once that legislation has been enacted, increases in the limit will require the consent of both Houses of Parliament. The Government remains committed to the introduction of such legislation (see the response to recommendation 17 above). It will

²⁴ Cabinet Office, Correspondence: special advisers severance pay, [Request for a ministerial direction: the Cabinet Office Permanent Secretary writes to the 10 Downing Street Principal Private Secretary](#), 12 July 2016

²⁵ Ibid.

²⁶ Cabinet Office, Correspondence: special advisers severance pay, [Confirmation of ministerial direction: the 10 Downing Street Principal Private Secretary to the Cabinet Office Permanent Secretary](#), 13 July 2016

²⁷ Ibid.

²⁸ Cm 4557 January 2000

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review the appropriate definition and level of the limit when drawing up the legislation.²⁹

The 2003 Committee on Standards in Public Life also recommended that there should be a statutory limit on the number of special advisers, and that this should be subject to alteration by resolution of both Houses.³⁰ The Government's response to this report stated that it no longer accepted the case for a cap on the number of special advisers:

the Government does not believe that the issue of special advisers can be considered as a numerical issue. The issue is about being transparent about accountability, roles and responsibilities and numbers.³¹

The *Constitutional Reform and Governance Act 2010* did not set a cap on the number of special advisers, although the Joint Committee set up to scrutinise the draft bill had called for some mechanism for "limiting the numbers of special advisers". The Brown Government's response to the Joint Committee on the Draft Constitutional Renewal Bill argued that numbers of advisers were in practice limited by the restrictions on Cabinet Ministers in para 3.2 of the *Ministerial Code* to appoint up to two special advisers, and that this was the appropriate means of providing for a limit on the number of special advisers.³²

²⁹ Cm 4817 July 2000 Response to Recommendation 21

³⁰ Committee on Standards in Public Life *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service* 8 April 2003

³¹ Cm 5964 September 2003 Response to Recommendation 22

³² Cm 7690, para 216

3. Developments in the role of special advisers

3.1 The Code of Conduct

Background

The *Code of Conduct for Special Advisers* sets out guidance and rules for the work of special advisers. The Code was first published in July 2001 by the Cabinet Office, following a recommendation from the (Neill) Committee on Standards in Public Life report in 2000, *Reinforcing Standards*, for a code of conduct for special advisers to be enforced by 'permanent heads of department'.³³

On 8 April 2003, the Committee on Standards in Public Life published its Ninth Report, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*.³⁴ The Committee noted concerns about the status and role of special advisers and recommended there be a clear statement of what special advisers could not do and that the *Code of Conduct for Special Advisers* should continue to list the types of work a special adviser may do at the request of the Minister.

The then Government accepted that there would be benefit in amending the *Code of Conduct for Special Advisers* to provide a clarification of the relationships between special advisers and permanent officials. It provided a draft of the proposed changes in an Annex. However, it did not accept that individual contracts should stipulate the type of work to be done by a special adviser, preferring to rely on the Code as general guidance.

The Government committed itself to making revisions to the *Ministerial Code* which would make it clear that all Ministers are personally accountable to the Prime Minister and to Parliament for the management and discipline of their special advisers and for investigating alleged breaches of the *Code of Conduct for Special Advisers*. The Government also committed itself to continuing the process of providing annual statements with data on the number and role of special and unpaid advisers in Government. Finally, it agreed to amend the letter of appointment for unpaid advisers so that it included a requirement not to use official resources for party political activity or to undermine the political impartiality of civil servants.

The Ninth Report of the Committee on Standards in Public Life had noted that the Civil Service Order in Council relating to special advisers of 1995 had referred to their role as one of "giving advice only". This was inconsistent with the *Code of Conduct for Special Advisers* which listed activities that special advisers could be asked to do by their Ministers. These activities went far beyond only giving advice. The Public

³³ Cm 4557 January 2000 Recommendation 22

³⁴ Committee on Standards in Public Life *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service* 8 April 2003

Administration Select Committee had therefore recommended the wording “providing assistance” in its report on a draft Civil Service Bill in 2004.³⁵

It emerged in July 2005 that the Government had changed the terms of the Order in Council which governs the role of special advisers and was drafting a new Code of Conduct and new Model Contract for special advisers. The then Prime Minister, Tony Blair, announced the changes in a parliamentary written statement on 21 July 2005.³⁶ The Prime Minister stated:

I have today placed in the Libraries of the both Houses copies of the revised code of conduct for special advisers and the revised model contract for special advisers. These reflect commitments given by the Government to the Public Administration Committee and the Committee on Standards in Public Life. The civil service Order in Council governing the appointment of special advisers has also been amended to the effect that special advisers are appointed to assist Ministers.

The manner of the change upset the Committee of Standards in Public Life, whose then chair, Sir Alastair Graham, issued two press releases on 19 and 21 July 2005.³⁷ He expressed concern that the change in wording had been made without the introduction of civil service legislation, contrary to the implications of the PASC report in 2004.

Recent changes to the Code

The 2016 Code

A revised [Code of Conduct for Special Advisers](#) was published on 21 December 2016. The Code states that special advisers are employed to serve “the Prime Minister and the Government as whole, not just their appointing Minister”.³⁸ The provision that special advisers serve the Government as a whole had been included in the 2010 Code to reflect the realities of a coalition government but has remained part of the updated Code.

The changes to the 2016 Code and the new model contract for special advisers are relatively minor, reflecting and incorporating technical changes made to the 2016 Ministerial Code.

The 2015 Code

A revised *Code of Conduct for Special Advisers* was published on 15 October 2015, following the 2015 General Election. A key change was a relaxing of the prohibition for special advisers from taking part in national political activities.

³⁵ HC 128 2003-4 January 2004. For background see Library Standard Note no 2863 *The Civil Service Bill 2003-4*

³⁶ HC Deb 21 July 2005 c162WS Dep 05/1002 (Code of Conduct for Special Advisers) and Dep 05/1001 (Model Contract for Special Advisers).

³⁷ “Changes to the law on Special Advisers” Committee on Standards in Public Life PN 19 July 2005. The relevant Order in Council is the Civil Service (Amendment) Order in Council 2005 made 22 June 2005 which can be found at <http://www.gazettes-online.co.uk>; “Revision of the Code of Conduct for Special Advisers” Committee on Standards in Public Life PN 21 July 2005

³⁸ Cabinet Office, [Special advisers: code of conduct](#), 21 December 2016, para 2

Changes to the 2015 Code included alterations to the section on special advisers' involvement in politics in a private capacity. The previous Code had prohibited special advisers from taking part in national political activities, including canvassing on behalf of a candidate or party.³⁹ Under the revised Code, special advisers may undertake work for a political party, provided it does not arise out of government business and if it is done in their own time or under a separate contract with the party, while working part-time for the Government.⁴⁰ These changes to paragraph 19 of the Code were made in response to the recommendations of the Public Administration Committee in their report, *Lessons for Civil Service impartiality from the Scottish independence referendum*.⁴¹

The 2015 Code also allows for special advisers to be publicly identified as candidates or prospective parliamentary candidates, provided that they have the approval of the Prime Minister and they resign as a special adviser at the beginning of the short campaign of an election.⁴² The previous Code had stated a special adviser must resign before they were identified as a candidate or prospective candidate.⁴³ The requirement that special advisers do not undertake local political activities in support of national politics was also removed. The new Code permits this, provided they adhere to certain requirements.⁴⁴

The inclusion of the word "instructions" to a paragraph on the role of special advisers has also attracted some attention. The 2015 Code states that when working with civil servants, special advisers can

convey to officials Ministers' views, instructions and priorities, including on issues of presentation. In doing so, they must take account of any priorities Ministers have set.⁴⁵

The previous code had stated that special advisers could "convey to officials Ministers' views and work priorities, including on issues of presentation".⁴⁶ Bernard Jenkin MP has raised concern about this change, telling *Civil Service World* that it alters the expectation of what special advisers can demand of officials and sets up "a new potential for conflict". According to Jenkin,

There will be times when officials cannot carry out Spads' instructions, because, for example, they are being asked to communicate in a partisan way or to do something which conflicts with the civil service code.⁴⁷

³⁹ Cabinet Office, *Code of Conduct for Special Advisers*, June 2010, para 19

⁴⁰ Cabinet Office, *Code of Conduct for Special Advisers*, October 2015, para 16

⁴¹ Public Administration Select Committee, *Lessons for Civil Service impartiality from the Scottish independence referendum*, Fifth Report of Session 2014-15, HC 111, 23 March 2015, para 86; Cabinet Office, *Code of Conduct for Special Advisers*, June 2010, para 19

⁴² Cabinet Office, *Code of Conduct for Special Advisers*, October 2015, para 18

⁴³ Cabinet Office, *Code of Conduct for Special Advisers*, June 2010, para 20

⁴⁴ Cabinet Office, *Code of Conduct for Special Advisers*, October 2015, para 20

⁴⁵ Cabinet Office, *Code of Conduct for Special Advisers*, October 2015, para 4

⁴⁶ Cabinet Office, *Code of Conduct for Special Advisers*, June 2010, para 7

⁴⁷ "A step back to the Alistair Campbell days" – Committee chair Bernard Jenkin questions fresh guidance for special advisers', *Civil Service World*, 22 October 2015

The 2015 Code also contains a slight change to the provision on the dissemination of inappropriate material. The 2010 Code had stated that any special adviser “ever found to be disseminating inappropriate material will automatically be dismissed by their appointing Minister”.⁴⁸ By contrast, the 2015 Code states that any special adviser found to be disseminating inappropriate material “will be subject to a disciplinary process that may include dismissal”.⁴⁹

Other changes to the Code included a requirement that special advisers work with the Prime Minister’s Office to ensure the “proper coordination” of announcements, media appearances and interviews.⁵⁰ Paragraph 15, on transparency, also included the addition of a requirement that details of special advisers’ meetings with newspaper and other media proprietors, editors and senior executives are published on a quarterly basis.⁵¹

The Conservative Government also published a new Model Contract for Special Advisers in October 2015.⁵² Some of the duties of a special adviser were altered in this, in line with the changes to the Special Advisers’ Code outlined above. The period of annual leave for a new special advisers was also reduced from 30 days to 25 days.⁵³

However, an updated Model Contract, published in 2016, allows up to a maximum of 30 days annual leave, depending on length of service⁵⁴.

The 2010 Code

A revised Code of Conduct for Special Advisers was published in June 2010 to reflect the requirements in the *Constitutional Reform and Governance Act 2010* which put the civil service and special advisers on a statutory footing, and to reflect the interests of the new coalition Government.⁵⁵

The Code stated that special advisers are “appointed to serve the Government as a whole and not just their appointing Minister.”⁵⁶ This new provision ensured that special advisers are serving the interests of the whole Government, regardless of the party affiliation of their appointing Minister.

Other new provisions in the Code were about the declaration of gifts and hospitality received whilst in service, as well as enhanced language on the standards expected of special advisers in relation to conduct in public life. The Code stated that “the preparation or dissemination of inappropriate material or personal attacks has no part to play in the job

⁴⁸ Cabinet Office, [Code of Conduct for Special Advisers](#), June 2010, para 6

⁴⁹ Cabinet Office, [Code of Conduct for Special Advisers](#), October 2015, para 11

⁵⁰ Cabinet Office, [Code of Conduct for Special Advisers](#), October 2015, para 12

⁵¹ Cabinet Office, [Code of Conduct for Special Advisers](#), October 2015, para 15

⁵² Cabinet Office, [Cabinet Office model contract for special advisers – October 2015](#), October 2015

⁵³ Cabinet Office, [Cabinet Office model contract for special advisers – October 2015](#), October 2015, para 7

⁵⁴ Cabinet Office, [Model contract for special advisers, December 2016](#), para 7a.

⁵⁵ Further detail on the development of the Code of Conduct for Special Advisers is available at section 7.1 of this note, and additional detail on the Constitutional Reform and Governance Act 2010 is available at section 7.3.

⁵⁶ Cabinet Office [Code of Conduct for Special Advisers](#) June 2010

of being a special adviser as it has no part to play in the conduct of public life. Any special adviser even found to be disseminating inappropriate material will automatically be dismissed by their appointing Minister". The Chief Press Adviser to Gordon Brown, Damien McBride, had resigned on 11 April 2009 as a result of leaked emails suggesting personal attacks on Opposition figures and the Cabinet Secretary had issued updated guidance to special advisers which they were required to sign.⁵⁷

The revised Code updated the section on 'Relations with the Permanent Civil Service' in order to comply with the *Constitutional Reform and Governance Act 2010's* requirement that special advisers may not "authorise the expenditure of public funds; exercise any power in relation to the management of any part of the civil service; and otherwise exercise any power conferred by or under this or any other Act or any power under Her Majesty's prerogative."⁵⁸

The Code of Conduct included a requirement for special advisers to disclose gifts and hospitality received, in line with departmental staff handbooks. Further to this, the then Prime Minister David Cameron announced in October 2010 that, for the first time, departments were publishing on their websites details of [gifts and hospitality received by their special advisers during the period 13 May to 31 July 2010](#). This information would also be updated on a quarterly basis.

The Conservative – Liberal Democrat Coalition Government also published a new Model Contract for Special Advisers in June 2010, but did not alter the wording of special adviser duties, and maintained the previous Government's position that special advisers are to "provide assistance to the Minister".

3.2 Special advisers and the Brown Government

Powers of Special Advisers

Former Prime Minister, Gordon Brown, took office on 27 June 2007. The afternoon press briefing for that day noted that "In his first act as Prime Minister he revoked the Orders of Council granting powers to special advisors to give instructions to civil servants."⁵⁹ This was a reference to the revocation of the powers given to Tony Blair in 1997 to appoint up to three special advisers with executive powers. The draft Civil Service Bill in 2003-04 gives a greater appreciation of the Blair Government thinking on the role of special advisers.⁶⁰

⁵⁷ "[Email smears a "serious breach"](#)", *BBC News*, 15 April 2009, [on 7 October 2009]

⁵⁸ [Constitutional Reform and Governance Act 2010](#)

⁵⁹ No. 10 Downing Street Afternoon Press Briefing for 27 June 2007. The relevant Order in Council is the *Civil Service (Amendment)(No 2) Order in Council 2007*, made on 28 June 2007. This Order did not make amendments to the new power given to special adviser to assist ministers in the Order in Council amendment made in 2005 by Mr Blair

⁶⁰ *A Draft Civil Service Bill: A Consultation Document* Cm6373 November 2004

Reorganising positions

On the same day Mr Brown announced a restructuring of positions within No. 10 and the Cabinet Office. He brought in a combination of career civil servants and special advisers to No. 10. He appointed a career civil servant, Tom Scholar, as Chief of Staff and Principal Private Secretary, so ending the division of roles under Mr Blair, whereby Jonathan Powell as special adviser had acted as Chief of Staff. However, the Deputy Chief of Staff, Gavin Kelly, was a special adviser. Mr Scholar was subsequently replaced by Jeremy Heywood, who had initially been appointed as an additional permanent secretary for domestic policy at the Cabinet Office in June 2007. Mr Heywood became chief of staff in January 2008, as a civil servant, not a special adviser.⁶¹

The Prime Minister's spokesman was a civil servant, Michael Ellam, but Damien McBride was appointed as a special adviser on political press issues. Mr McBride had acted as Mr Brown's special adviser when Chancellor. Mr Brown's director of government relations, Sue Nye, was a special adviser as was the new head of the No. 10 policy unit, Dan Corry, formerly Chair of the Council of Economic Advisers at the Treasury. A former Treasury special adviser, Spencer Livermore, was appointed as Director of Political Strategy on special adviser terms. There was some press comment to the effect that the new appointments had several links with the Treasury and with the think-tank IPPR.⁶²

On 22 November 2007 a written ministerial statement was issued giving the list of special advisers appointed under the Brown Government. There had been a reduction in the number of special advisers in both No. 10 and in the Treasury, since at this point only one member of the Council of Economic Advisers had been appointed.⁶³ At the same time a revised Code of for Special Advisers and a revised Model Contract was published.⁶⁴ There were no major changes in the revisions and there has been no change in the Order in Council setting out the role of special advisers. The revision omits the justification for specialist special advisers in the 2005 version and promotes their use as 'an additional resource for the Minister, providing assistance from a standpoint that is more politically committed and politically aware than would be available to a Minister from the permanent civil service' (para 2). The twelve types of work suitable for a special adviser remained the same.

The Constitutional Reform and Governance Act 2010

The Green Paper *The Governance of Britain* was published in July 2007.⁶⁵ It contained commitments to bring forward legislation on the civil service and to include within this legislation the regulation of special advisers. There was no commitment in the Green Paper to limit the role

⁶¹ "Brown calls up big hitter to restore order" 24 January 2008 *Financial Times*

⁶² "Brown to put civil servants back at heart of Government" 7 June 2007 *Daily Telegraph*

⁶³ HC Deb 22 November 2007 c147WMS-150W. For CEA, see "Two's a crowd" 26 October 2007 *Financial Times*

⁶⁴ Dep 2007/0134

⁶⁵ Cm 7170 Ministry of Justice. For further details see Library Research Paper 07/72 *The Governance of Britain Green Paper*

of special advisers to advice and not assistance, and no commitment to include a limit on the numbers of special advisers in the proposed civil service legislation.

The Queen's Speech on 6 November 2007 referred to the proposed *Constitutional Reform Bill* as draft, and this was published on 25 March 2008 as a white paper and draft bill, *The Governance of Britain: Constitutional Renewal*.⁶⁶ The proposals to place the Civil Service on a statutory footing are discussed in detail in Library Standard Note 2863, *Civil Service Legislation*. Pre-legislative scrutiny of the draft bill was undertaken by both a specially constituted joint committee of both Houses,⁶⁷ and the Public Administration Select Committee.⁶⁸

On 8 April 2010, just before the dissolution of the 2005 Parliament, the *Constitutional Reform and Governance Act 2010* received Royal Assent. In the Commons, the provisions on special advisers were relatively uncontroversial, and the Act received an expedited passage in the Lords, so scrutiny was curtailed. The Act includes three sections relating to special advisers.

[Section 15](#) deals specifically with the roles and responsibilities of special advisers. This section sets out that special advisers are appointed directly by a Minister to "assist" that Minister. The language is consistent with changes that were made in July 2005 to the role of special advisers from "giving advice only" to "providing assistance to the Minister". Appointment must be approved by the relevant Prime Minister or First Minister. The term of office ends with that of the Minister or the relevant election day. Section 16 requires the Government to report annually on the expenditure and numbers of special advisers. Similar requirements are placed on the Executives in Scotland and Wales, following Government amendments at Commons Committee stage.⁶⁹

[Section 8](#) outlines the specific requirements for a code of conduct for special advisers.

These various provisions put into statutory form guidance applicable to special advisers and the history and development of the guidance is discussed below. The Act also removed the limits on the numbers of special advisers in the devolved executives of Scotland and Wales introduced in 1999. However, the legislation did not extend to Northern Ireland.⁷⁰

⁶⁶ Ministry of Justice, *The Governance of Britain – Constitutional Renewal*, March 2008, Cm7342 – I-III

⁶⁷ HL 166-I 2007-08

⁶⁸ HC 499 2007-08

⁶⁹ See [Research Paper 10/18](#) for full details of the debates and changes made at Commons Committee stage

⁷⁰ *Civil Service (Amendment) Order in Council 1999*. Background is given in the Committee on Standards in Public Life Sixth Report Cm 4557 2000, para 6.13. Equivalent provision was made for Northern Ireland in the *Civil Service Commissioners (Northern Ireland) Order 1999*. This Order was amended in 2003 and on 25 July 2007 to allow two junior ministers in the Officer of the First and the Deputy First Minister to appoint one adviser each, if so authorised.

3.3 Training and induction of special advisers

In a 2013 report the Public Administration Select Committee considered provision for training and induction of special advisers and concluded that the Government should ensure that all special advisers receive induction training within three months of taking up the role. The report stated that this should cover:

- the structure and work of the relevant department;
- the scope and meaning of the various Codes of Conduct to which special advisers are subject;
- the implications of their status as temporary civil servants (including the business appointment rules process, and their obligations under public records and access to information and? legislation);
- the nature of their accountability to Ministers (and Ministers' accountability to Parliament);
- the role of permanent secretaries in managing the work and reputation of the department as a whole; and
- where to seek advice and support on propriety issues⁷¹

The Government's response agreed with the Committee's recommendation.⁷²

In the context of discussions about the training and induction of special advisers, the Constitution Unit at the UCL published in 2014 a handbook, *Being A Special Adviser*, which sought in particular to provide guidance to new special advisers on what they could expect of the role and how they could be most effective. The Institute for Government has also published several papers on the role, and importance to effective Government, of special advisers.⁷³

paid or unpaid) are appointed "under the terms and conditions set out in the *Model Contract for Special Advisers* and the *Code of Conduct for Special Advisers*".⁷⁴ It is unclear whether any special advisers appointed during the 2010 Parliament were unpaid, as the data releases only provide details of salary where this is over £65,000.

⁷¹ HC 134 2012-13 Paras 39-45

⁷² HC 515 2013-14

⁷³ [Special advisers and ministerial effectiveness](#) October 2012, [In Defence of Special Advisers – Lessons from personal experience](#) March 2014, [The Unelected Lynchpin: Why Government Needs Special Advisers](#) December 2014

⁷⁴ Cabinet Office May 2010 *Ministerial Code* at <http://www.cabinetoffice.gov.uk/media/409215/ministerialcodemay2010.pdf>

4. Incidents regarding special advisers, 2010-2015

During the 2010 Parliament there were a number of high profile incidents regarding special advisers and, in one instance, an individual who appeared to be representing himself as a ministerial adviser, although he was not a special adviser.

There was significant interest in the appointment of the former editor of the *News of the World* Andy Coulson as an adviser to the Prime Minister at a salary of £140,000.⁷⁵ Mr Coulson subsequently resigned in January 2011, following allegations about his former role as editor of the *News of the World*.⁷⁶

In 2011 there was concern about the role of Adam Werritty, a friend of then Secretary of State for Defence, Liam Fox, who was found to have accompanied Dr Fox on a series of visits abroad without any official authorisation or role as a special adviser. The Cabinet Secretary conducted an investigation and found that Mr Werritty's use of business cards describing him as an adviser to Dr Fox gave the impression that Mr Werritty spoke on behalf of the UK Government and/or was associated with Dr Fox in some form of official capacity. Dr Fox had resigned on 14 October 2011.⁷⁷

In June 2012, Adam Smith resigned as special adviser to the Culture Secretary, Jeremy Hunt, after it was revealed to the Leveson inquiry that Smith had exchanged 500 emails, text messages and phone conversations with News International when Mr Hunt was considering the News Corporation bid for control of BSkyB. The Cabinet Office later issued a [set of principles on the taking of quasi-judicial decisions](#).⁷⁸

In 2012 the Committee on Standards in Public Life noted that recent controversies had demonstrated the importance of clarity and transparency about the role of individuals who advise ministers.⁷⁹

In 2014 Fiona Cunningham resigned as special adviser to the Home Secretary, Theresa May, after it was established that she had been the source of a negative briefing to *The Times* regarding Education Secretary Michael Gove. This incident was part of a wider dispute between the two Ministers which raised questions about possible breaches of the *Ministerial Code*.

In their 2015 report, [Lessons for Civil Service impartiality from the Scottish referendum](#), the Public Administration Committee concluded that special advisers working for Conservative ministers had breached paragraph 19 of the *Special Advisers Code of Conduct* during the

⁷⁵ "[David Cameron's PR director, Andy Coulson, paid £140,000](#)" 10 June *BBC News*

⁷⁶ "[Andy Coulson resigns among phone hacking allegations](#)" 21 January 2011 *Daily Telegraph*

⁷⁷ "[Liam Fox quits as defence secretary](#)" 14 October 2011 *BBC News*

⁷⁸ Principles governing the handling of quasi-judicial decisions by ministers in letter from Francis Maude to Bernard Jenkin 10 October 2013

⁷⁹ [Written Evidence to the Public Administration Select Committee CSPL](#) 15 June 2012

Rochester and Strood by-election in 2014.⁸⁰ In the run up to the by-election, these special advisers “had been subject to a general direction to take part in telephone canvassing on behalf of their party”.⁸¹ The Committee found that when the advisers had requested instructions or guidance permitting them to comply with this request, they were told to rely on a letter from the Conservative Party, which was not their employer. The Committee therefore recommended:

that either: the Special Advisers’ Code and employment contracts should be amended to reflect what ministers and the Cabinet Secretary would prefer them to mean in respect of telephone canvassing, or it should be made clear that Special Advisers must comply with their Code and contracts of employment as they are written.⁸²

The updated *Code of Conduct for Special Advisers*, published in October 2015, contained revised provisions reflecting the Committee’s recommendations.

⁸⁰ Public Administration Select Committee, [Lessons for Civil Service impartiality from the Scottish independence referendum](#), Fifth Report of Session 2014-15, HC 111, 23 March 2015, paras 86-87

⁸¹ Public Administration Select Committee, [Lessons for Civil Service impartiality from the Scottish independence referendum](#), Fifth Report of Session 2014-15, HC 111, 23 March 2015, para 83

⁸² Public Administration Select Committee, [Lessons for Civil Service impartiality from the Scottish independence referendum](#), Fifth Report of Session 2014-15, HC 111, 23 March 2015, para 87

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