



BRIEFING PAPER

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Civil Service Recruitment: Heads of Department

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Summary

The *Constitutional Reform and Governance Act 2010* requires selection for appointment to the Civil Service to be on merit on the basis of fair and open competition. The Civil Service Commission is required to publish Recruitment Principles which Departments and Agencies must apply for this purpose. The Act also allows the Commission to exempt some appointments from these requirements. The last major revision of the Recruitment Principles was in early 2014. The Commission intends to issue a slightly revised version of the principles to come into effect from the 2018/19 financial year.

The Government's June 2012 *Civil Service Reform Plan* stated that Ministers should have a greater role in the appointment of Permanent Secretaries. In response, the Civil Service Commission published a note explaining the role of Ministers in Permanent Secretary appointments. It argued that giving Ministers a choice of candidates would not be compatible with the requirements of the *Constitutional Reform and Governance Act 2010*. However, in October 2014 the Civil Service Commission announced that from December 2014, the Prime Minister would be given a choice of appointable candidates for Head of Department Civil Service roles.

Following recommendations made in a June 2013 Institute for Public Policy Research report, the Government announced in July 2013 that Ministers would be able to establish Extended Ministerial Offices (EMOs). The IPPR's 2013 report had recommended that Secretaries of State and Ministers who run Departments should be provided with an extended office of Ministerial staff that they could personally appoint and who would work on their behalf. However, the 2016 Ministerial Code removed the provisions for EMOs which led to their dismantling. Initial take up of the EMOs was low and the total number established during the period was five.

1. Requirements of the *Constitutional Reform and Governance Act 2010*

1.1 Selection for appointment to the Civil Service

The *Constitutional Reform and Governance Act 2010* requires selection for appointment to the Civil Service to be on merit on the basis of fair and open competition. The Civil Service Commission is required to publish a set of principles to be applied for this purpose. The current version of the Recruitment Principles defines the relevant terms:

4. **Merit** means the appointment of the best available person judged against the essential criteria for the role. No one should be appointed to a job unless they are competent to do it and the job must be offered to the person who would do it best.
5. **Fair** means there must be no bias in the assessment of candidates. Selection processes must be objective, impartial and applied consistently.
6. **Open** means that job opportunities must be advertised publicly. Potential candidates must be given reasonable access to information about the job and its requirements, and about the selection process. In open competitions anyone who wishes must be allowed to apply.¹

The *Constitutional Reform and Governance Act 2010* exempts some appointments from the requirement to be on merit on the basis of fair and open competition. Diplomatic appointments as Head of Mission or Governor of an overseas territory, and appointments as special advisors are exempted by the legislation.

In addition, the Civil Service Commission is able to exempt other categories of appointments where it believes it to be “justified by the needs of the Civil Service or be necessary to enable the Civil Service to participate in a Government employment initiative”.² The full list of exceptions is set out in the Annex to the Civil Service Recruitment Principles.³

The approval of the Civil Service Commission is required for certain appointments. For open competitions (for which non-civil servants may apply) Commission approval is needed for Permanent Secretary, and Senior Civil Service (SCS) Pay Bands 3 and 2. For internal competitions, Commission approval is only required for Permanent Secretary and Pay Band 3 levels.

The Commission undertakes regular audits of the recruitment policies and practices of Departments and Agencies to ensure compliance with the requirement of appointment on merit on the basis of fair and open

¹ Civil Service Commission, [Recruitment Principles](#), April 2015

² Civil Service Commission, [Recruitment Principles](#), April 2015, p 8

³ Civil Service Commission, [Recruitment Principles](#), April 2015 Annex A

competition. Any individual may complain to the Commission that the requirements have not been met although complaints should first be raised with the recruiting Department or Agency.

1.2 Proposed Revision of the Recruitment Principles

The Civil Service Commission intends to issue a revised version of its Recruitment Principles to come into effect from the beginning of the 2018/19 financial year. The last major revision of the Recruitment Principles was in 2014. However, the Commission states that it 'is not proposing a major revision of the Recruitment Principles at this point' but the changing needs civil service recruitment mean that, in its opinion, some adjustments would be beneficial.

The revised text makes some adjustments to the use of the permitted exceptions to the merit requirements and will also reflect the removal of the provision for Extended Ministerial Offices (see section 3 below) from the Ministerial Code.

The main proposals include:

- Introducing a new exception to 'recognise that there are circumstances when recruitment on merit on the basis of fair and open recruitment is unlikely to bring in individuals with highly specialist skills in the numbers required within desired timeframe'. Use of this exception will be subject to the prior approval of the Commission.
- Removing the stipulation introduced in 2014 that conversion from temporary to permanent appointments must involve competition against permanent staff. Instead, conversion may be by any merit-based process agreed in advance by the Commission as was previously the method.
- Requiring Departments to obtain the Commission's approval for an individual to be appointed by exception for a period of over two years.
- Replacing the Reserve List requirement to appoint to a role with the 'same' essential criteria with 'closely matching' essential criteria.⁴

⁴ Civil Service Commission [Consultation Revision of the Recruitment Principles](#) January 2018

2. Appointing Heads of Department

2.1 Current Practice

In October 2014 the Civil Service Commission announced that, from December 2014, for Head of Department appointments, the Prime Minister would be given a choice of candidates where more than one candidate is considered “appointable”. The Civil Service Commission explained that the Prime Minister will receive an assessment of the strengths and weaknesses of those candidates judged appointable by the panel, from which s/he will make the final selection.⁵

The Commission has introduced a number of safeguards within the appointments process for Heads of Department posts:

- The selection panel will be chaired by the First Civil Service Commissioner, who must approve the panel membership and all aspects of the recruitment process;
- The competition can be paused by the First Commissioner if he or she believes the Commission’s recruitment principles are not being followed;
- The panel alone will determine which candidates are put to the Prime Minister with a clear assessment of their suitability for the post against the advised criteria;
- There is no opportunity for a candidate to be added to the list of the panel has not assessed them as appointable.⁶

Previous versions of the Commission’s rules had allowed for the panel to recommend just one candidate to the Prime Minister that s/he could either accept or reject.⁷

2.2 Background

The Civil Service Reform Plan June 2012 and initial changes made to the rules

The Government’s Civil Service Reform Plan was published in June 2012. Amongst its proposals, the Government made a case for greater Ministerial involvement in both Departmental and Permanent Secretary appointments. The Government had argued that the relationship between the Permanent Secretary and Secretary of State was “crucially important” and that allowing the Secretary of State to have greater influence over the appointment would increase the chance of the relationship working successfully. The Government stated that they were consulting the Civil Service Commission on how this might be done.

⁵ Civil Service Commissioners, [Prime Minister to be given a choice of appointable candidates in Head of Department competitions](#), 15 October 2014

⁶ Ibid

⁷ Civil Service Commissioners, [Recruitment Principles](#), April 2012

In November 2012 the Prime Minister exercised his power of veto over the appointment of the Permanent Secretary at the Department of Energy and Climate Change. David Kennedy, then Chief Executive of the Climate Change Committee, had been recommended for appointment by a panel chaired by the First Civil Service Commissioner.⁸ He was reportedly vetoed due to his lack of commercial experience to run a Department which deals with major utility companies and his known views on climate change and energy policy. Before the Liaison Committee in December 2012, David Cameron argued that commercial expertise was essential, as well as an open mind on fracking.⁹

In December 2012 the Civil Service Commission published revised guidance for Civil Service Commission appointments that proposed a limited increase in the Secretary of State's role in the appointment process. The Public Administration Select Committee's (PASC) report on Permanent Secretary appointments published in March 2014 summarised the changes:

...the Secretary of State would:

- be consulted at the outset on the nature of the job, the skills required, and the best way of attracting a strong field;
- agree the final job description and person specification and the terms of the advertisement;
- agree the composition of the selection panel, in particular to ensure that there was sufficient external challenge;
- meet each of the shortlisted candidates to discuss his or her priorities and feed back to the panel on any strengths and weaknesses to probe at final interview; and would have the option of further consultation before the panel made its recommendation.¹⁰

However, in a question and answer paper published in December 2012, the Commission stated that in the course of discussions with the Government, they had "made it clear that we did not believe that giving Ministers a choice of candidates was compatible with the role given to the Commission by the Constitutional Reform and Governance Act".¹¹

The First Civil Service Commissioner, Sir David Normington, told PASC that giving ministers the final say in Permanent Secretary appointments would be a "step in the wrong direction".¹²

⁸ "PM rejects climate expert for top job", *Financial Times*, 29 November 2012

⁹ BBC News [Cameron defends decision to block top civil service appointment](#) 11 December 2012

¹⁰ Public Administration Select Committee, [Latest proposals for ministerial involvement in permanent secretary appointments: PASC's recommendations](#), 28 February 2014, HC 1041 2013-14, p5

¹¹ Civil Service Commission, [Q & A: Ministerial involvement in appointments](#), December 2012

¹² Public Administration Select Committee, [Latest proposals for ministerial involvement in permanent secretary appointments: PASC's recommendations](#), 28 February 2014, HC 1041 2013-14, para 8

In July 2013 the Government published a paper *Civil Service Reform: One Year On*. This stated that the Commission's revised guidance did not go as far as the Government would have liked. The Government committed to working with the Commission to review the guidance before concluding whether or not legislation would be required.

Accountability and responsiveness in the Civil Service: IPPR Report, June 2013

In June 2013 the Institute for Public Policy Research (IPPR) published a study into accountability and responsiveness in the Civil Service on behalf of the Government. The IPPR noted that the two fundamental requirements of the Civil Service were often seen as pulling in separate directions. The Civil Service needed to be both sufficiently "responsive" to the Government of the day whilst at the same time retaining a degree of "independence":

Tip too far towards "independence" and there is a danger that the Civil Service will become self-serving and immune to political leadership...; too far the other way and there is a danger that it will become captured, serving partisan rather than the national interest.¹³

The report made a series of recommendations, including that the Prime Minister should be given the power to appoint Permanent Secretaries from a list of appointable candidates. The report argued that the Prime Minister rather than Secretaries of State should make the appointments in part due to the turnover of Ministers, and also because the IPPR believed this change would not require legislation.

The Institute for Government considered the recommendations made by the IPPR in its own report on Permanent Secretary Appointments. It found that:

...ministers in practice often have more influence than the official story allows. But such influence is often exercised through opaque and undocumented channels. Selection panels are known to take active steps to avoid the possibility of a veto – to the point of avoiding recommending a candidate likely to be opposed by the minister. Selection competitions are also run in circumstances where it is more or less known in advance who the successful candidate will be. Managed moves offer another mechanism for undocumented ministerial influence.

On the specific proposal of allowing ministerial choice from a shortlist of 'appointable' candidates, a common concern is that this would undermine the principle of civil service impartiality. The Civil Service Commission has opposed this reform on these grounds. However, we take a different position. So long as there is rigorous merit-based assessment preceding the exercise of ministerial choice and appointed candidates are bound by the existing civil service code and values, then there would not be an increased risk of politicisation, but a system that is more accountable and more closely reflects the reality.¹⁴

¹³ IPPR, [Accountability and Responsiveness in the Civil Service: Lessons from Overseas](#), June 2013

¹⁴ Institute for Government, [Permanent Secretary Appointments and the Role of Ministers](#), June 2013, p7

Review of the recruitment principles in early 2014

In January 2014 the Civil Service Commission published draft recruitment principles which proposed two options for increasing Ministerial involvement in permanent secretary appointments:

- a. Formalising the arrangement whereby the recruitment panel could seek and take into account the views of the Secretary of State;
- b. Putting forward two or more candidates for choice to the Prime Minister for a decision in cases where they were marked under the same band under the Commission's making frame.

In its March 2014 report, Public Administration Select Committee stated it favoured the first option. The Civil Service Commission at this time decided to pursue the first option rather than giving the Prime Minister a choice.¹⁵

Prime Minister given the choice of appointable candidates: December 2014

In October 2014 the Civil Service Commission announced that from 1 December 2014 the Prime Minister would make the final selection decision from the appointable candidates in consultation with the Head of the Civil Service and the First Civil Service Commissioner. The Commission stated it had long accepted the need for Ministers to be fully involved in competitions for the most senior posts and for the Prime Minister to make the decision of whether or not to appoint a particular candidate. However, it had not wanted to "go further" until they could be sure that the principle of "an impartial Civil Service appointed on merit" could be fully protected.¹⁶ A series of "safeguards" were introduced into the appointments process as outlined above

In a blog post, the Rt Hon Peter Riddell, then Director of the Institute for Government, broadly welcomed the changes but highlighted three issues that the proposals raised:

First, the Commission stresses that its focus is not on grades but on heads of department who both report to a Secretary of State and are accounting officers. This is not the same as Permanent Secretaries, not all of whom will be included, though the Cabinet Secretary and the new chief executive of the civil service will be. Ministers will press for a larger group than the 25 departmental heads to include other officials who work closely with ministers.

Second, the proposals do not reflect the existence of the coalition. The Liberal Democrats are concerned that the role of the Deputy Prime Minister is ignored. The Commission believes that is a matter for the government and for the Prime Minister to resolve how far the Deputy Prime Minister should be involved.

Third, and related, is the position of Secretaries of State who will, after all, have to work with the heads of department. At present, they are consulted throughout but they are not mentioned in the

¹⁵ Civil Service Commission, [Response to consultation](#), 11 April 2014

¹⁶ Civil Service Commission, [Prime Minister to be given choice of appointable candidates in Head of Department competitions: Q and A](#)

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proposals. Presumably, their views will count. This, again, is of particular concern to the Liberal Democrats after the initial choice of the DECC Permanent Secretary two years ago had been backed by Ed Davey but was then vetoed by David Cameron, and a fresh recruitment process was started. (By contrast, the Scottish and Welsh First Ministers will have the final decision over the most senior civil servant in their governments.)¹⁷

¹⁷ Peter Riddell, [By Prime Ministerial Appointment: the PM and Permanent Secretaries](#), 17 October 2014

3. Extended Ministerial Offices

3.1 Background to the Extended Ministerial Offices (EMOS)

The IPPR's 2013 report had also recommended that Secretaries of State and Ministers who run Departments should be provided with an extended office of Ministerial staff that they personally appoint and who work on their behalf. The Government's *Civil Service Reform Plan: One Year on Report*, announced that the Government would implement this proposal:

...the Government will provide for Ministers in charge of departments the ability to appoint an "Extended Ministerial Office" subject to the agreement of the Prime Minister. In a Coalition Government, the appointment of an extended office will be agreed by the Prime Minister and Deputy Prime Minister, and they will also consider proposals to strengthen the office of the Coalition Minister (the junior Minister in a department headed by a Secretary of State of a different party).

The Extended Ministerial Office could comprise existing civil servants fulfilling the traditional private office role, special advisors and external appointees. Members of the office would be personally appointed by the Minister and be directly accountable to them. Civil service appointments would be made in accordance with the requirements of the Civil Service Commission's recruitment principles. The office could provide a number of functions including support for policy formulation, implementation, media handling, and responding to correspondence, as well as the traditional private office functions.¹⁸

In November 2013 the Government published guidance on the appointment of EMOs.¹⁹ It stated that the appointment of such offices by Secretaries of State and other Ministerial heads of departments had been agreed by the Cabinet.

The Guidance stated that Ministers would, in consultation with their Permanent Secretary, agree the composition of the office, the mix of staff and skills required, and the budget. All EMO proposals required the approval of the Prime Minister as Minister for the Civil Service. It also outlined that EMOs could include a range of different roles:

An EMO could include civil servants fulfilling the traditional private office role, special advisors and external appointees. The office could include support for policy formation, implementation, media, correspondence, relations with Parliament and so on, as well as the traditional private office function. As part of the approval process to establish an EMO, the PM and DPM will require that a member of the EMO focuses on implementation reporting also to the Head of the Implementation Unit.

¹⁸ [Civil Service Reform: One Year On](#), p31

¹⁹ [Extended Ministerial Offices: Guidance for Departments](#) November 2013

3.2 The 2016 Ministerial Code

The 2016 Ministerial Code discreetly removed the provisions for establishing EMOs.²⁰ Clarifying the change Baroness Chisholm of Owlpen, the Lords Spokesperson, stated:

the Extended Ministerial Office regime allowed for additional appointments to support Ministers, these provisions have now ended. We believe that the long-standing arrangements of Ministerial support through Civil Service private offices and special advisers provide the right balance.²¹

When first introduced in 2013, initial take up of the EMO model was low. No EMOs were set up under the Conservative and Liberal Democrat Coalition Government (2010-2015) due to the 'seemingly burdensome guidance from the Cabinet Office, including requirements under the Coalition Government for sign-off by both parties'.²²

A total number of five EMOs were approved before the provision for their establishment was removed. They were for the Cabinet Office, the Department for Communities and Local Government, the Department for Education and the Department for the Environment, Food and Rural Affairs²³ and the Scotland Office.²⁴

Liz Truss, when *Secretary of State for Environment, Food and Rural Affairs* (DEFRA) was a strong advocate of EMOs.²⁵ So too was the then Permanent Secretary, Claire Moriarty who found the appointments to be useful:

I think what's been really interesting is that the EMO has allowed us to access a different group of people who can come in and ask questions – who see the world in a different way²⁶

However, EMOs did receive some criticism for potentially politicising the impartial Civil Service. Lord Hennessy said in 2014 that their introduction alongside the question of Ministerial Choice appeared to amount to "creeping politicisation that dare not speak its name".²⁷

²⁰ Cabinet Office Ministerial Code December 2016

²¹ HL WS398 [Written Statement](#) 21 December 2016

²² Nicola Hughes [Is scrapping Extended Ministerial Offices a mistake?](#) Institute for Government Blog Article 6 January 2017

²³ [PQ 8466 \[on Ministers' Private Offices\]](#)

²⁴ [PQ 18656 \[on Ministers' Private Offices\]](#)

²⁵ Civil Service World [Existing Ministerial Offices to be 'dismantled'](#) Cabinet Office [confirms](#) 17 January 2017

²⁶ Civil Service World [Interview with DEFRA Permanent Secretary](#) 24 March 2016

²⁷ HL [Column](#) 241 16 January 2014

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