

CONSTITUTIONAL REFORM AND GOVERNANCE ACT 2010

EXPLANATORY NOTES

SUMMARY

4. A summary of the Act is set out below.

Part 1: The Civil Service

5. **Part 1** of the Act provides for:
- A power for the Minister for the Civil Service to manage the civil service, and a parallel power for the Secretary of State in relation to the diplomatic service;
 - A requirement for a code of conduct for civil servants which specifically requires civil servants to carry out their duties in accordance with the core civil service values of integrity, honesty, objectivity and impartiality;
 - The establishment of a Civil Service Commission with functions in relation to selections for appointments to the civil service and in relation to hearing complaints that the civil service and diplomatic service codes have been breached;
 - A requirement for appointments to the civil service to be made on merit on the basis of fair and open competition;
 - Requirements as to the appointments of Special Advisers. The appointments are to be exempt from the fair and open competition principle;
 - A requirement for a separate code of conduct for special advisers which provides 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 (except in relation to other special advisers) or otherwise exercise any statutory or prerogative power.
6. The new statutory Civil Service Commission will take on the functions of the existing Civil Service Commissioners. The Civil Service Commission will publish principles on the application of the fundamental requirement that selections for appointment are made on merit on the basis of fair and open competition, and will investigate complaints under the code of conduct for civil servants. The First Civil Service Commissioner and the other Civil Service Commissioners will be the members of the new Civil Service Commission. Transitional arrangements will enable those serving as Civil Service Commissioners automatically to move across to the new commission when it becomes operational.
7. Whilst the Act removes the prerogative powers for the management of the Civil Service, the prerogative will be retained in relation to security vetting and the management of the parts of the Civil Service of the State (listed in section 1) which are not covered by the provisions in Part 1.

Part 2: Ratification of Treaties

8. **Part 2** of this Act puts Parliamentary scrutiny of treaty ratification on a statutory footing and gives legal effect to a resolution of the House of Commons or Lords that a treaty should not be ratified. This means that should the House of Commons take the view that the Government should not proceed to ratify a treaty, it can resolve against ratification and thus make it unlawful for the Government to ratify the treaty. The House of Lords will not be able to prevent the Government from ratifying a treaty, but if they resolve against ratification the Government will have to produce a further explanatory statement explaining its belief that the agreement should be ratified. Part 2 concerns scrutiny of the ratification of agreements entered into by the Government under international law. It does not change the current position that an Act of Parliament would be required if it were intended to give effect in domestic law to matters embodied in such an agreement.

Part 3: Parliamentary Standards etc

9. **Part 3** of the Act amends the Parliamentary Standards Act 2009 (“the 2009 Act”) and makes provision for the Independent Parliamentary Standards Authority (“the IPSA”) to make a scheme providing for the payment of resettlement grants for Members of the European Parliament who have opted-out of the common arrangements under the single Statute for MEPs which came into effect on 14 July 2009 (“opted-out MEPs”). It also makes provision for IPSA to make a MPs’ pension scheme and to make a scheme dealing with the administration and management of the Parliamentary Contributory Pension Fund, and for the Minister for the Civil Service to make a pension scheme in relation to Ministers and certain other office holders.
10. The amendments to the 2009 Act provide for:
- the appointment by the IPSA of a Compliance Officer for the Independent Parliamentary Standards Authority (“the Compliance Officer”) to police the MPs’ expenses regime;
 - the abolition of the office of Commissioner for Parliamentary Investigations;
 - a review by the Compliance Officer of a refusal by the IPSA to pay the whole or part of an MP’s expenses claim;
 - the investigatory and enforcement powers of the Compliance Officer in relation to suspected and proven overpayments of MPs’ expenses;
 - MPs’ rights of appeal to the First-tier Tribunal against the decisions of the Compliance Officer;
 - the abolition of the IPSA’s functions in relation to MPs’ financial interests;
 - the IPSA to be under certain duties to promote efficiency, cost-effectiveness and transparency in the way it discharges its functions;
 - the IPSA to determine MPs’ pay;
 - the duty on the IPSA to pay MPs’ salaries and allowances to be subject to the exercise of the disciplinary powers of the House of Commons in relation to an individual MP;
 - the extension of the membership of the Speaker’s Committee for the Independent Parliamentary Standards Authority to include three lay members; and
 - the repeal of the sunset provisions in section 15 of the 2009 Act.

Part 4: Tax status of MPs and members of the House of Lords

11. **Part 4** of the Act provides that Members of Parliament and most members of the House of Lords are to be deemed to be resident, ordinarily resident and domiciled (“ROD”) in

the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax. As a result, MPs and Lords will be liable to pay these taxes in the UK on their worldwide income, gains and assets regardless of their actual status in the UK, and will be unable to access the remittance basis of taxation.

12. The deemed status will start from the tax year 2010-2011, and will apply to individuals in whole tax years (including where an individual is a member only for part of a tax year). The deemed status will apply to MPs once they have taken the oath of allegiance, at the start of the new Parliament in 2010. It will apply to members of the House of Lords, with the exception of the Lords Spiritual and those temporarily disqualified from sitting in the House by virtue of being an MEP or a judge, following a three month transitional period. During the transitional period members of the House of Lords will be able to state that they do not wish to be subject to the deemed status and leave the House without the deemed status applying to them. Members who leave the House of Lords under this Part will remain disqualified from being, or being elected as, a member of the House of Commons for three years beginning with the date on which they give notice that they do not wish to be subject to the deemed status. Those who remain members at the end of the three month transitional period will automatically be deemed ROD from the start of the 2010-11 tax year.

Part 5: Transparency of Government Financial Reporting to Parliament

13. **Part 5** of the Act contains two sections. *Section 43* amends the Government Resources and Accounts Act 2000 (“the GRAA 2000”) in order to allow the Treasury to issue directions about the way departments prepare Supply Estimates and to direct that such Estimates are to include information relating to “designated bodies”. It also includes provision preventing the designation of a body if it is funded solely from the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund and makes consequential amendments to the GRAA 2000. *Section 44* amends the Government of Wales Act 2006 to make corresponding provision in relation to Wales.

Part 6: Public Records and Freedom of Information

15. **Part 6** of the Act amends the Public Records Act 1958 and the Freedom of Information Act 2000. The period within which certain public records must be transferred to the Public Record Office or other places of deposit is reduced from 30 years to 20 years. In parallel, a number of exemptions from the obligations to disclose information under the Freedom of Information Act will cease to apply after 20 years rather than 30 years. Part 6 also strengthens the exemption from disclosure under the Freedom of Information Act for information relating to communications with the Royal Family and Royal Household.

Part 7: Miscellaneous and Final Provisions

Section 47: section 3 of the Act of Settlement

16. *Section 47* of the Act concerns modifications made to section 3 of the Act of Settlement by the Electoral Administration Act 2006 for the purposes of eligibility to sit in the House of Commons. *Section 47* removes any uncertainty about broader effects of this modification.

Section 48: Parliamentary elections: counting of votes

17. *Section 48* places a duty on returning officers to take reasonable steps to begin counting the votes given on the ballot papers as soon as practicable within four hours of the close of the poll in parliamentary elections (polling closes at 10pm). The provision applies in both general elections and by-elections, and imposes a duty on returning officers to

*These notes refer to the Constitutional Reform and Governance
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publish and return to the Electoral Commission a statement in the event that they are not able to begin the count within the specified time.