

*These notes refer to the Constitutional Reform and Governance Act 2010 (c.25) which received Royal Assent on 8th April 2010*

# CONSTITUTIONAL REFORM AND GOVERNANCE ACT 2010

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## EXPLANATORY NOTES

### BACKGROUND

18. Some of the provisions contained within the Constitutional Reform and Governance Act 2010 stem from *The Governance of Britain* Green Paper (Cm 7170) published on 3 July 2007. This document can be found at:

[www.official-documents.gov.uk/document/cm71/7170/7170.pdf](http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf)

19. This Green Paper set out the Government's proposals for constitutional renewal. It stated that those goals were:

- to invigorate our democracy;
- to clarify the role of Government, both central and local;
- to rebalance power between Parliament and the Government, and give Parliament more ability to hold the Government to account; and
- to work with the British people to achieve a stronger sense of what it means to be British.

20. The Green Paper proposed that the power to make key decisions that affect the whole country, such as whether to ratify treaties, should not stem solely from the Royal prerogative, but rest on a more formal footing, with Parliament playing a key role in determining the exercise of the power. Similarly, the Government proposed that the governance of the Civil Service, also based on the Royal prerogative, and the fundamental values of the Civil Service – impartiality, integrity, honesty and objectivity – should be set out in statute.

21. Following the publication of the Green Paper, the Government published a number of consultation documents on particular policies. These are referred to where relevant in the background to each separate Part of the Act.

22. In March 2008, the Government published a draft Constitutional Renewal Bill. This can be found at:

[www.official-documents.gov.uk/document/cm73/7342/7342\\_ii.pdf](http://www.official-documents.gov.uk/document/cm73/7342/7342_ii.pdf)

23. It contained draft provision in relation to:

- Demonstrations in the vicinity of Parliament;
- the Attorney General and prosecutions;
- Courts and tribunals;
- Ratification of treaties; and

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- the civil service.
24. The draft Bill was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The Joint Committee reported in July 2008 and its report (HL Paper 166 and HC Paper 551) can be found at:
- [www.publications.parliament.uk/pa/jt200708/jtselect/jtconren/166/166.pdf](http://www.publications.parliament.uk/pa/jt200708/jtselect/jtconren/166/166.pdf)
25. In addition, the Justice Committee of the House of Commons held an enquiry into the provisions relating to the Attorney General. Its report (Fourth Report of the 2007-8 Session, HC 698) can be found at:
- [www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698/69802.htm](http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698/69802.htm)
26. The Public Administration Committee of the House of Commons also held an enquiry which largely focused on the Civil Service provisions of the draft Bill, although it did also consider the proposals on Treaties. Its report (Tenth Report of the 2007-8 Session, HC 499) can be found at:
- [www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/499/49902.htm](http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/499/49902.htm)
27. The Constitutional Reform and Governance Act 2010 contains provisions on:
- The civil service;
  - Ratification of treaties;
  - Parliamentary standards etc.;
  - The tax status of MPs and members of the House of Lords;
  - Transparency of Government financial reporting to Parliament;
  - Public records and freedom of information;
  - Section 3 of the Act of Settlement; and
  - Counting of votes at parliamentary elections.
28. The following paragraphs provide background on each Part of the Act.

### **Part 1 Background - The civil service**

29. The basis of the civil service as we know it today dates back to the Northcote-Trevelyan Report of 1854. The report set out the enduring core values and key principles that underpin the role and governance of the civil service – integrity, honesty, impartiality and objectivity. The report also recommended that these values and principles should be enshrined in legislation. However, no Government ever took forward this recommendation. Instead, over the last 150 years or so, Ministers have exercised powers in relation to the civil service under the Royal prerogative.
30. In recent years, the merits of civil service legislation have been the subject of considerable debate, and there have been growing calls to implement the Northcote-Trevelyan recommendations and bring forward legislation relating to the civil service. In 2003, the House of Commons Public Administration Select Committee published a draft Civil Service Bill and, building on this, the Government launched a consultation *A draft Civil Service Bill – A Consultation Document* (Cm 6373, November 2004). This document can be found at:

[www.cabinetoffice.gov.uk/media/cabinetoffice/propriety\\_and\\_ethics/assets/consultation\\_bill\\_cm\\_6373.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/propriety_and_ethics/assets/consultation_bill_cm_6373.pdf)

31. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (Cm 7342-3).
32. These consultation processes and other public debates revealed a considerable body of opinion in favour of civil service legislation. Therefore, the Government announced in July 2007, in its Green Paper, *The Governance of Britain* (Cm 7170), that it intended to bring forward legislation which would “include measures which will enshrine the core principles and values of the civil service in law”. The Joint Committee on the draft Constitutional Renewal Bill concluded that the civil service provisions received “overwhelming support” (paragraph 240, Report of the Joint Committee on the draft Constitutional Renewal Bill. HL Paper 166-I and HC Paper 551-I).

## **Part 2 Background - Ratification of treaties**

33. The non-legislative convention for the Parliamentary scrutiny of treaties was known as the Ponsonby Rule. It provided that treaties which did not come into force on signature, but which instead came into force later when governments expressed their consent to be bound through a formal act such as ratification, should be laid before both Houses of Parliament as a Command Paper for a minimum period of 21 sitting days. The Rule gave no legal effect to a resolution of either House that a treaty should not be ratified. Since 1997, the practice of laying a memorandum alongside treaties to explain their effect has been routine. In addition, in 2000, the Government undertook that it would normally provide the opportunity to debate any treaty involving major political, military or diplomatic issues, if the relevant select committee and the Liaison Committee of the House of Commons so requested (Government response of 31 October 2000 to the House of Commons Procedure Committee’s Second Report of Session 1999-2000, Parliamentary Scrutiny of Treaties (HC210)).
34. *The Governance of Britain* Green Paper (Cm 7170, July 2007) set out the Government’s belief that Parliament should have the right to scrutinise treaties prior to their ratification. In the Green Paper the Government went on to propose that the procedure for allowing Parliament to scrutinise treaties should be formalised, and committed to consulting on an appropriate means for putting the Ponsonby Rule on a statutory footing.
35. A consultation document *The Governance of Britain – War powers and treaties: Limiting Executive powers* (Cm 7239) was published on 25 October 2007. The document can be found at:  

[www.justice.gov.uk/docs/cp2607a.pdf](http://www.justice.gov.uk/docs/cp2607a.pdf)
36. The document invited comments on an appropriate means to put the Ponsonby Rule on a statutory footing. The consultation period ran until 17 January 2008. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (Cm 7342-3). The Government published clauses in the draft Constitutional Renewal Bill which provided for treaties to be laid before Parliament for 21 sitting days prior to ratification, and to give effect to the consequences of a negative vote in either House of Parliament, with provision for flexibility and exceptions based on established practice.

## **Part 3 Background – Parliamentary Standards etc**

37. The Government introduced the Parliamentary Standards Bill in June 2009 in response to public concerns over the issue of MPs’ expenses. The Bill received Royal Assent on 21 July 2009.
38. The Parliamentary Standards Act 2009 (“the 2009 Act”):
  - established the Independent Parliamentary Standards Authority (“the IPSA”) with responsibility for:

- paying the salaries of MPs in accordance with the relevant resolutions of the House of Commons;
  - drawing up the MPs' allowances scheme and authorising and making payments to MPs under the scheme; and
  - preparing a code of conduct relating to MPs' financial interests:
  - established a Commissioner for Parliamentary Investigations with powers to investigate any overpayments under the allowances scheme and failures to comply with the requirements in the code relating to the registration of financial interests; and
  - created a Speaker's Committee for the Independent Parliamentary Standards Authority responsible for approving the selection of the members of the IPSA and scrutinising the IPSA's estimate of the use of resources.
39. The Committee on Standards in Public Life launched a review of MPs' expenses on 23 April 2009. The Committee's report "MPs' expenses and allowances – supporting Parliament, safeguarding the taxpayer" (Cm 7724) was published on 4 November 2009. The report contained 60 recommendations, the majority of which related to the details of the allowances scheme and, as such fell to the IPSA to implement as part of its responsibility for preparing an allowances scheme. However, a number of the recommendations relate to the role and functions of the IPSA and, as such, required primary legislation.
40. The Government announced in a Written Ministerial Statement of 10 December 2009<sup>1</sup> that it proposed to bring forward legislation to implement ten of the 60 recommendations. The relevant recommendations dealt with the following matters:
- Ensuring that the House of Commons is empowered to remove an MP's right to receive a resettlement grant in cases of significant abuse (recommendation 33);
  - The IPSA to be under statutory duties as to efficiency, cost-effectiveness and transparency (recommendations 41, 49 and 60);
  - Abolition of the IPSA's functions in respect of the regulation of MPs' financial interests and the associated code of conduct (recommendation 42);
  - Responsibility for determining MPs' pay and pensions to be transferred to the IPSA (recommendation 43);
  - Replacement of the Commissioner for Parliamentary Investigations with a Compliance Officer (recommendation 44);
  - Enforcement powers of the Compliance Officer (recommendation 45);
  - The appointment of lay members of the Speaker's Committee (recommendation 48); and
  - Repeal of the sunset provisions in section 15 of the 2009 Act (recommendation 53).
41. **Part 3** of this Act gives effect to these recommendations.

#### **Part 4 Background – Tax status of MPs and members of the House of Lords**

42. On 16 December 2009 the Leader of the House of Commons announced that the Government intended to bring forward legislation to provide that MPs and members of

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<sup>1</sup> Hansard, col. 33WS-38WS:

[www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091210/wmstext/91210m0002.htm#column\\_33WS](http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091210/wmstext/91210m0002.htm#column_33WS)

the House of Lords should pay UK tax in the same way as the vast majority of taxpayers in the UK.

43. [Part 4](#) of this Act gives effect to this intention.

### **Part 5 Background – Transparency of government financial reporting to Parliament**

44. There are a number of different systems which have an impact on the control and presentation of government expenditure. These include HM Treasury budgetary controls, supply estimates presented to Parliament for approval and resource accounts prepared by departments at the end of each financial year.
45. These different systems mean that there is significant misalignment between the different bases on which financial information is presented to Parliament and the public. Government financial documents are published in different formats, and on a number of different occasions during the year. This makes it difficult to understand the links and inter-relationships between them.
46. In July 2007 the Government announced in *The Governance of Britain* Green Paper a “Clear Line of Sight” (Alignment) Project to simplify its financial reporting to Parliament by better aligning budgets, estimates and resource accounts. The Treasury submitted detailed proposals for better alignment to Parliament in a Memorandum in March 2009 (Cm 7567). The Liaison Committee of the House of Commons responded to the Government's proposals in its report *Financial Scrutiny: Parliamentary Control over Government's Budgets (HC 804)*, published on 3 July 2009. The report accepted, on behalf of the relevant select committees of the House of Commons, all of the Government's proposals for a better aligned public spending framework as set out in Cm 7567.
47. [Part 5](#) of this Act deals with an aspect of the Alignment Project. [Section 43](#) amends the Government Resources and Accounts Act 2000 (“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”. This provides for departmental estimates and accounts to include the spending of Non-Departmental Public Bodies and other central government bodies for which the departmental has responsibility, thereby aligning with the budgetary treatment. This section 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.
48. [Section 44](#) amends Part 5 of the Government of Wales Act 2006. The changes simplify the arrangements for financial reporting and accountability to the National Assembly for Wales (the “Assembly”) by better aligning the contents of the annual budget motion with the use of the resources set out in the resource accounts produced by Ministers and other persons to whom the Assembly votes resources.

### **Part 6 Background – Public Records and Freedom of Information**

49. On 25 October 2007, the Prime Minister announced an independent review into the “30-year rule” (the rule under which most records are transferred to the National Archives and made available to the public by the time they are 30-years old). The Review published its findings in January 2009. On 10 June 2009 the Prime Minister announced the Government's intention to change the relevant period from 30 to 20 years, and to enhance the protection for certain categories of information.
50. The Government response to the 30-Year Rule Review report was published in the form of a Command Paper (Cm 7822) on 25 February 2010.

## **Part 7 Background - Miscellaneous and Final Provisions**

### **Section 47 – section 3 of the Act of Settlement**

51. Section 18(7) of the Electoral Administration Act 2006 (“the 2006 Act”) repealed the first entry in Schedule 7 to the British Nationality Act 1981. That entry had modified the application of section 3 of the Act of Settlement (which concerns eligibility for membership of both Houses of Parliament, the Privy Council and certain offices under the Crown) by disapplying part of it in relation to Commonwealth and Republic of Ireland citizens; and in so doing allowed such citizens to be Members of either House and to hold offices under the Crown.
52. This change was made in consequence of the provision at section 18(1) of the 2006 Act, which substituted a new modification of section 3 of the Act of Settlement that applies only for the purposes of membership of the House of Commons: under its terms, Commonwealth citizens who do not have indefinite leave to remain in the UK are prevented from being members of the House of Commons. However, since the drafting of the legislation did not contain provisions expressly saving the first entry in Schedule 7 to the British Nationality Act 1981 in relation to membership of the House of Lords and other offices under the Crown, a question was raised about whether the eligibility of Commonwealth or Republic of Ireland citizens for membership of the House of Lords and other positions was affected.
53. The Government did not consider that the eligibility was affected. In particular, it clearly was not the intention of Parliament in passing the 2006 Act to change the entitlement of Commonwealth and Republic of Ireland citizens to sit in the House of Lords. The Government nevertheless concluded that it was best to put the issue beyond doubt.

### **Section 48 – Parliamentary elections: counting of votes**

54. Rule 44(1) of the parliamentary elections rules contained in Schedule 1 to the Representation of the People Act 1983 (“the rules”) provides that the returning officer in a parliamentary election shall make arrangements for counting the votes as soon as practicable after the close of the poll. This gives discretion to returning officers about when exactly the count should begin, and in particular whether it is practicable to start the count on the evening of polling day or on the following day.
55. *Section 48* amends the rules to provide that a returning officer must 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.