

Constitutional Renewal Bill [HL]

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A
B I L L

TO

Repeal sections 132 to 138 of the Serious Organised Crime and Police Act 2005; to make provision relating to the Attorney General; to make provision relating to the ratification of treaties and to participation in armed conflict by the United Kingdom; to make provision relating to the civil service; to make provision relating to parliamentary general elections; to make provision relating to the conduct of members of Parliament; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

DEMONSTRATIONS IN THE VICINITY OF PARLIAMENT

1 Repeal of sections 132 to 138 of Serious Organised Crime and Police Act 2005

- (1) Omit sections 132 to 138 of the Serious Organised Crime and Police Act 2005 (c. 15) (which regulate demonstrations in the vicinity of Parliament). 5
- (2) In the Table in section 175(3) of that Act (transitional provision relating to offences), omit the entries relating to section 136.
- (3) In paragraph 1(1) of Schedule 2 to the Noise and Statutory Nuisance Act 1993 (c. 40) (which is about consents for the operation of loudspeakers), omit “or of section 137(1) of the Serious Organised Crime and Police Act 2005”. 10
- (4) Omit paragraph 64 of Schedule 6 to the Serious Crime Act 2007 (c. 27).

PART 2

THE ATTORNEY GENERAL

*Independent role for Attorney General and Solicitor General***2 Ending of political role**

- (1) Any holder of the office of Attorney General or Solicitor General is disqualified for – 5
- (a) membership of the House of Commons, and
 - (b) membership of the House of Lords.
- (2) Amend the House of Commons Disqualification Act 1975 (c. 24) as follows – 10
- (a) in Part III of Schedule 1 (disqualifying offices), insert at the appropriate place –
 - “Attorney General”
 - “Solicitor General”;
 - (b) in Schedule 2 (which lists the Ministerial offices subject to the maximum specified in section 2 of that Act), omit the following entries – 15
 - “Attorney General”
 - “Solicitor General”.
- (3) In Part III of Schedule 1 to the Ministerial and other Salaries Act 1975 (c. 27) (salaries of the Law Officers), omit the following entries – 20
- “Attorney General”
 - “Solicitor General”.

3 Duty to act independently and in the public interest

- The Attorney General must have adequate arrangements for ensuring that the functions of the office of Attorney General – 25
- (a) are discharged independently (in particular, of any Minister of the Crown or government department), and
 - (b) are discharged in the public interest and in accordance with the existing constitutional principle of the rule of law.

4 Publication of advice 30

- (1) This section applies where –
- (a) the Attorney General has given legal advice to a Minister of the Crown in relation to any matter, and
 - (b) in tabling a motion to consider any question on that matter for resolution by one or both Houses of Parliament, the Minister has had regard to some or all of that legal advice. 35
- (2) As soon as is practicable after the motion is tabled, the Minister of the Crown must publish the Attorney General’s legal advice in such manner as the Minister considers appropriate.
- (3) Nothing in subsection (2) requires the publication of any information that relates to any communications between Ministers of the Crown that were 40

made for, or in connection with, the obtaining of legal advice from the Attorney General about the matter in question.

Ground rules of Attorney’s superintendence of Directors

5 Ban on directions in individual cases

- (1) The Attorney General’s function of superintendence of the Directors does not include power to give direction in relation to an individual case. 5
- (2) Subsection (1) is subject to section 15 (duty to intervene to safeguard national security).
- (3) In this section and section 6 “the Directors” means – 10
- (a) the Director of Public Prosecutions (see section 7),
 - (b) the Director of the Serious Fraud Office (see section 8), and
 - (c) the Director of Revenue and Customs Prosecutions (see section 9).
- (4) Nothing in subsection (1) affects the operation of any enactment or provision of subordinate legislation under which the Attorney General has a prosecution consent function. 15
- (5) In this section –
“prosecution consent function” has the meaning given in section 10(1);
“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

6 Protocol for running of prosecution services

20

- (1) The Attorney General –
- (a) must in consultation with the Directors issue a statement (a “protocol”) of how the Attorney General and the Directors are to exercise their functions in relation to each other, and
 - (b) must from time to time review the protocol and may in consultation with the Directors modify or replace it. 25
- (2) The protocol may in particular include provision as to –
- (a) the general responsibilities of the Attorney General and each of the Directors;
 - (b) the arrangements for ensuring that the Attorney General is properly advised on matters relating to the strategic direction of the prosecution services and on matters affecting more than one prosecution service;
 - (c) the circumstances in which the Attorney General is to be consulted or provided with information;
 - (d) the objectives of the prosecution services; 30
 - (e) the way in which the objectives are set and the means by which their achievement or otherwise is reviewed;
 - (f) the way in which matters relating to the accountability of the Attorney General to Parliament for prosecution services are to be handled;
 - (g) the role of the Attorney General and the Directors in relation to dealing with representatives of the press and other media; 40
 - (h) procedures for dealing with complaints relating to the prosecution services.

- (3) The protocol and any modification of it may not be issued unless it has been laid in draft before Parliament and approved by a resolution of each House.
- (4) The Attorney General and the Directors must have regard to any relevant provision of the protocol when carrying out their functions.
- (5) “The prosecution services” means the Crown Prosecution Service, the Serious Fraud Office and the Revenue and Customs Prosecutions Office. 5

New provisions about tenure of office of the Directors

7 Director of Public Prosecutions

- (1) The Director of Public Prosecutions –
 - (a) is appointed by the Attorney General, and 10
 - (b) subject to what follows, holds office in accordance with the terms of the appointment.
- (2) The Director must have a 10 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41).
- (3) Service as the Director is service in the civil service of the State. 15
- (4) There is to be paid to the Director such remuneration as the Attorney General may, with the approval of the Minister for the Civil Service, determine.
- (5) Any appointment under subsection (1) must be for a term of 5 years and may be renewed on expiry.
- (6) The Director may at any time resign by notice in writing to the Attorney General. 20
- (7) The Attorney General may remove the Director from office only if satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office.
- (8) The factors which the Attorney General may take into account in determining whether the Director is unfit to carry out the functions of the office include, in particular – 25
 - (a) failure by the Director to comply with section 6(4) (duty to have regard to relevant provisions of the protocol), and
 - (b) failure by the Director to perform the functions of the office efficiently and effectively. 30

8 Director of the Serious Fraud Office

- (1) The Director of the Serious Fraud Office –
 - (a) is appointed by the Attorney General, and
 - (b) subject to what follows, holds office in accordance with the terms of the appointment. 35
- (2) Service as the Director is service in the civil service of the State.
- (3) There is to be paid to the Director such remuneration as the Attorney General may, with the approval of the Minister for the Civil Service, determine.
- (4) Any appointment under subsection (1) must be for a term of 5 years and may be renewed on expiry. 40

- (5) The Director may at any time resign by notice in writing to the Attorney General.
- (6) The Attorney General may remove the Director from office only if satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office.
- (7) The factors which the Attorney General may take into account in determining whether the Director is unfit to carry out the functions of the office include, in particular –
 - (a) failure by the Director to comply with section 6(4) (duty to have regard to relevant provisions of the protocol), and
 - (b) failure by the Director to perform the functions of the office efficiently and effectively.

9 Director of Revenue and Customs Prosecutions

- (1) The Director of Revenue and Customs Prosecutions –
 - (a) is appointed by the Attorney General, and
 - (b) subject to what follows, holds office in accordance with the terms of the appointment.
- (2) The Director must have a 10 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41).
- (3) Service as the Director is service in the civil service of the State.
- (4) There is to be paid to the Director such remuneration as the Attorney General may, with the approval of the Minister for the Civil Service, determine.
- (5) Any appointment under subsection (1) must be for a term of 5 years and may be renewed on expiry.
- (6) The Director may at any time resign by notice in writing to the Attorney General.
- (7) The Attorney General may remove the Director from office only if satisfied that the Director is unable, unfit or unwilling to carry out the functions of the office.
- (8) The factors which the Attorney General may take into account in determining whether the Director is unfit to carry out the functions of the office include, in particular –
 - (a) failure by the Director to comply with section 6(4) (duty to have regard to relevant provisions of the protocol), and
 - (b) failure by the Director to perform the functions of the office efficiently and effectively.

Attenuation of Attorney’s prosecution consent functions 35

10 Meaning of “prosecution consent function” and “the Directors”

- (1) For the purposes of this Part, the Attorney General has a prosecution consent function under an enactment if under that enactment –
 - (a) proceedings for an offence may not be instituted except by, or with the consent of, the Attorney General (or by, or with the consent of, the Attorney General or one or more other persons), or

- (b) the Attorney General (or the Attorney General or one or more other persons) has a function of giving a consent to the taking of any other step in connection with proceedings for an offence.
- (2) In subsection (1)(a) and (b), “offence” includes a service offence as defined by section 50 of the Armed Forces Act 2006 (c. 52). 5
- (3) In sections 11 and 12 “the Directors” has the same meaning as in sections 5 and 6, except that it also includes the Director of Service Prosecutions.
- 11 Power to end other prosecution functions of the Attorney**
- (1) The Attorney General may by order amend any existing enactment or existing provision of subordinate legislation under which the Attorney General has a prosecution consent function. 10
- (2) An order under this section may, in particular, make provision under which the Attorney General’s prosecution consent function –
- (a) becomes the function of one of the Directors or, in the absence of that Director, a person authorised by that Director; 15
- (b) becomes the function of one of the Directors but is a function to which the relevant delegation provision applies;
- (c) is removed.
- (3) An order under this section may make consequential, incidental, supplementary, transitional or saving provision. 20
- (4) The power to make an order under this section is exercisable by statutory instrument.
- (5) No order may be made under this section unless it has been laid in draft before Parliament and approved by a resolution of each House.
- 12 Effect of provisions conferring functions on the Director or authorised person** 25
- (1) This section applies in relation to any enactment or provision or subordinate legislation under which a function is that of one of the Directors or, in the absence of that Director, a person authorised by the Director.
- (2) The relevant delegation provision does not apply to the function.
- (3) The Director’s authorisation – 30
- (a) may relate to a specified person or to persons of a specified description, and
- (b) may be general or relate to a specified function or specified circumstances.
- 13 Sections 11 and 12: minor definitions** 35
- (1) In sections 11(2)(b) and 12(2) “the relevant delegation provision” means –
- (a) in relation to the Director of Public Prosecutions, section 1(7) of the Prosecution of Offences Act 1985 (c. 23);
- (b) in relation to the Director of the Serious Fraud Office, section 1(8A) of the Criminal Justice Act 1987 (c. 38); 40

- (c) in relation to the Director of Revenue and Customs Prosecutions, section 37(4) of the Commissioners for Revenue and Customs Act 2005 (c. 11);
 - (d) in relation to the Director of Service Prosecutions, section 365(4A) of the Armed Forces Act 2006 (c. 52). 5
- (2) In section 11(1) –
- “existing enactment” means an enactment contained in an Act passed on or before the last day of the Session in which this Act is passed;
 - “existing provision of subordinate legislation” means a provision of subordinate legislation made on or before that day; 10
 - “amend” includes repeal or revoke.
- (3) In sections 11 and 12 and this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

Powers of intervention in relation to proceedings and investigations

14 Abolition of nolle prosequi 15

The power of the Attorney General to enter a nolle prosequi is abolished in relation to proceedings in England and Wales.

15 Duty to intervene on ministerial certificate concerning national security

- (1) This section applies where the Attorney General receives a certificate signed by a Minister of the Crown stating that the Minister is satisfied that – 20
- (a) the carrying out of an investigation of specified matters, or
 - (b) the institution or continuation of proceedings for a specified offence, is likely to prejudice national security.
- (2) The Attorney General must give such of the following directions as appear to the Attorney General to be necessary for the purpose of avoiding the prejudice to national security referred to in the certificate – 25
- (a) a direction to the Director of the Serious Fraud Office that no investigation of specified matters is to take place in England and Wales;
 - (b) a direction to any prosecutor, in relation to an investigation of specified matters, that no proceedings for an offence are to be instituted in England and Wales in respect of those matters; 30
 - (c) a direction to any prosecutor that proceedings for a specified offence which are being conducted in England and Wales against a specified person are not to be continued.
- (3) The Attorney General must withdraw any direction given under subsection (2) if directed to do so by a Minister of the Crown. 35
- (4) In this section –
- “offence” includes a service offence as defined by section 50 of the Armed Forces Act 2006;
 - “prosecutor”, in relation to an offence, means any person who – 40
 - (a) has the conduct of proceedings for the offence, or
 - (b) has the function of or is determining whether proceedings for the offence should be instituted;

“specified” means specified in the certificate signed by the Minister of the Crown.

16 Effect of certain directions under section 15

- (1) Where the Attorney General has given a direction under section 15(2)(b), no proceedings for an offence are to be instituted in respect of the matters which are the subject of the investigation. 5
- (2) Subsection (1) does not prevent the institution of proceedings for an offence in respect of those matters if the direction is withdrawn.
- (3) Where the Attorney General has given a direction under section 15(2)(c), the prosecutor must take such steps as are appropriate to ensure that the proceedings which are the subject of the direction are brought to and end as soon as is practicable. 10
- (4) If the prosecutor fails to comply with subsection (3), any court before which the proceedings are being conducted may make an order –
 - (a) bringing the proceedings to an end, and 15
 - (b) making such other provision as appears to the court to be appropriate (including provision as to the effect of the order on the bringing of fresh proceedings in respect of the same offence).
- (5) In this section –
 - (a) “offence” and “prosecutor” have the same meaning as in section 15; 20
 - (b) the reference in subsection (4) to a court includes a reference to a service court within the meaning of section 324(4) of the 2006 Act.

17 Reports on directions under section 15

- (1) This section applies where the Attorney General has –
 - (a) given a direction under section 15(2), or 25
 - (b) withdrawn a direction under section 15(3).
- (2) The Attorney General must prepare and lay before Parliament a report on the giving or withdrawal of the direction –
 - (a) as soon as is practicable after the giving or withdrawal of the direction, or 30
 - (b) if the certificate under section 15(1) states that it is necessary to delay the report for the purpose of avoiding prejudice to national security, as soon as a Minister of Crown directs that further delay is no longer necessary for that purpose.
- (3) Nothing in subsection (2) requires information to be included in a report if – 35
 - (a) the certificate under section 15(1) specifies that the information is to be excluded from the report, or
 - (b) the Attorney General is satisfied that –
 - (i) a claim to legal professional privilege (or in Scotland confidentiality of communications) could be maintained in respect of the information in legal proceedings, or 40
 - (ii) the inclusion of the information would prejudice the investigation of a suspected offence or proceedings before any court.

Miscellaneous and supplementary

18 Annual report on exercise of Attorney’s functions

- (1) As soon as is practicable after 4th April in any year the Attorney General must prepare and lay before Parliament a report on the exercise of the functions of the Attorney General during the year ending with that date. 5
- (2) Nothing in subsection (1) requires information to be included in a report if –
 - (a) any certificate under section 15(1) specifies that the information is to be excluded from the report, or
 - (b) the Attorney General is satisfied that –
 - (i) a claim to legal professional privilege (or in Scotland confidentiality of communications) could be maintained in respect of the information in legal proceedings, or 10
 - (ii) the inclusion of the information would prejudice the investigation of a suspected offence or proceedings before any court. 15

19 Amendments consequential on Part 2

Schedule 1 (which contains amendments consequential on this Part) has effect.

PART 3

TREATIES AND ARMED CONFLICTS

Ratification of treaties 20

20 Treaties to be laid before Parliament before ratification

- (1) A treaty is not to be ratified unless conditions 1 to 4 or conditions 1 to 5 (as the case may be) are met.
- (2) Condition 1 is that the Secretary of State has laid before Parliament a copy of the treaty. 25
- (3) Condition 2 is that the treaty has been published in a way that the Secretary of State thinks appropriate.
- (4) Condition 3 is that the Treaties Committee established under section 21 –
 - (a) has laid before Parliament a report on the treaty under that section before the expiry of the initial period, or 30
 - (b) has recommended that the initial period be extended by such number of days as the Committee may specify and has laid a report before Parliament before the expiry of that extended period.

In this subsection, the “initial period” is the period of 21 sitting days beginning with the first sitting day after the date on which Condition 1 is met. 35
- (5) Condition 4 is that –
 - (a) the relevant period has expired without either House having resolved that the treaty should not be ratified, or
 - (b) if either House resolves that within the relevant period that the treaty should not be ratified, condition 5 has been met. 40

In this subsection, the “relevant period” is the initial period referred to in subsection (4)(a) or, if an extension to that period was recommended under subsection (4)(b), the initial period plus the number of additional days specified by the Treaties Committee.

- (6) Condition 5 is that – 5
- (a) the Secretary of State has laid before Parliament a statement indicating that the Secretary of State is of the opinion that the treaty should nevertheless be ratified and explaining why, and
 - (b) the review period has expired without either House having resolved within that period that the treaty should not be ratified. 10
- In this subsection, the “review period” is the period of 21 sitting days, beginning with the first sitting day after the date on which statement referred to in paragraph (a) is laid.
- (7) The Secretary of State may lay a statement under subsection (6) on more than one occasion. 15
- (8) In this section “sitting day” means a day on which either House of Parliament sits.

21 The Treaties Committee

- (1) There is to be a Committee, called the Treaties Committee (referred to in this section as “the Committee”) – 20
- (a) to examine any treaty laid before Parliament under section 20 and to report to Parliament its recommendation as to whether the treaty should be ratified, and
 - (b) to examine any other treaty-like documents (such as memoranda of understanding, memoranda of agreement, common positions etc.) and to call the attention of Parliament to such documents if the committee considers it appropriate to do so. 25
- (2) The Committee shall consist of 12 Members –
- (a) who are to be drawn both from the members of the House of Commons and from the members of the House of Lords; and 30
 - (b) none of whom may be a Minister of the Crown.
- (3) The members of the Committee are to be appointed by the Prime Minister and one of them is to be appointed as chair.
- (4) Any appointment under subsection (3) may be made only after consultation with the leader of each registered political party to which ten or more members of the House of Commons belongs. 35
- (5) Past service is no bar to appointment to the Committee.
- (6) A member of the Committee –
- (a) holds office for the duration of the Parliament in which he is appointed, but 40
 - (b) ceases to be a member on –
 - (i) ceasing to be a member of the House of Commons,
 - (ii) ceasing to be a member of the House of Lords,
 - (iii) becoming a Minister of the Crown,
 - (iv) being required by the Prime Minister to vacate office, or 45

- (v) giving notice in writing of the member’s intention to resign from office as member.
- (7) The Committee may determine its own procedure.
- (8) “Registered political party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41). 5

22 Section 20 not to apply to certain descriptions of treaties

- (1) Section 20 does not apply to –
 - (a) a treaty covered by section 12 of the European Parliamentary Elections Act 2002 (c. 24) (treaty providing for increase in European Parliament’s powers not to be ratified unless approved by Act of Parliament); 10
 - (b) a treaty covered by section 5 of the European Union (Amendment) Act 2008 (c. 7) (treaty amending founding Treaties not to be ratified unless approved by Act of Parliament).
- (2) Section 20 does not apply to a treaty in relation to which an Order in Council may be made under one or more of the following – 15
 - (a) section 158 of the Inheritance Tax Act 1984 (c. 51) (double taxation conventions);
 - (b) section 788 of the Income and Corporation Taxes Act 1988 (c. 1) (double taxation arrangements);
 - (c) section 173 of the Finance Act 2006 (c. 25) (international tax enforcement arrangements). 20

23 Meaning of “treaty” and “ratification”

- (1) In this Part “treaty” means an agreement in writing –
 - (a) between States or between States and international organisations, and
 - (b) binding in international law. 25
- (2) In this Part a reference to ratification of a treaty is a reference to an act of a kind specified in subsection (3) which establishes as a matter of international law the United Kingdom’s consent to be bound by the Treaty.
- (3) The acts are –
 - (a) deposit or delivery of an instrument of ratification, accession, approval or acceptance; 30
 - (b) deposit or delivery of a notification of completion of domestic procedures.

Participation in war etc.

24 Parliamentary approval before participating in war etc. 35

- (1) Before the exercise of any power to commit the United Kingdom to direct participation in –
 - (a) war,
 - (b) international armed conflict, or
 - (c) international peace-keeping activities, 40the prior approval of Parliament for such participation must be given by a resolution of each House.

- (2) Subsection (1) does not apply in any case where the Prime Minister –
- (a) considers that exceptional considerations require immediate action to be taken,
 - (b) notifies each House of Parliament accordingly, and
 - (c) as soon as is practicable provides each House with a statement of the reasons for taking the view referred to in paragraph (a).

PART 4

THE CIVIL SERVICE

Application

25 Application of Part 10

- (1) This Part applies to the civil service of the State excluding the parts listed in subsection (2).
- (2) The parts excluded are –
 - (a) the Secret Intelligence Service;
 - (b) the Security Service; 15
 - (c) the Government Communications Headquarters;
 - (d) the Northern Ireland Civil Service;
 - (e) the Northern Ireland Courts Service.
- (3) References to the civil service and civil servants are to be read accordingly.

Civil Service Commission 20

26 Establishment of the Civil Service Commission

- (1) There is to be a body corporate called the Civil Service Commission.
- (2) Schedule 2 (Civil Service Commission) has effect.
- (3) The Commission has the role in relation to selections for appointments to the civil service set out in sections 34 to 36. 25
- (4) See also –
 - (a) section 32(7) to (9) (which provides for the making of complaints to the Commission under civil service codes of conduct);
 - (b) section 40 (monitoring by the Commission);
 - (c) section 41 (arrangements for the Civil Service Commission to carry out additional functions). 30

Management

27 Management of the civil service

- (1) The Minister for the Civil Service has the power to manage the civil service (excluding the diplomatic service). 35
- (2) The Secretary of State has the power to manage the diplomatic service.

- (3) The powers referred to in subsections (1) and (2) do not cover –
 - (a) recruitment, appointment, discipline or dismissal of individual civil servants,
 - (b) day-to-day management of individual civil servants, or
 - (c) national security vetting (and accordingly do not affect any power relating to national security vetting). 5
- (4) The Secretary of State may not exercise the power referred to in subsection (2) in relation to –
 - (a) remuneration, expenses and allowances of civil servants (including compensation payable on leaving the civil service), or 10
 - (b) the conditions on which a civil servant may retire, without the agreement of the Minister for the Civil Service.

28 Civil service management functions

- (1) The Civil Service (Management Functions) Act 1992 (c. 61) is amended as follows. 15
- (2) For the italic cross-heading before section 1 substitute “*Civil service (excluding the diplomatic service)*”.
- (3) In section 1 (delegation of functions), for subsections (1) and (2) substitute –
 - “(1) This section applies to the functions conferred on the Minister for the Civil Service by section 27 of the Constitutional Renewal Act 2009 (management of the civil service). 20
 - (2) The Minister for the Civil Service may, to such extent and subject to such conditions as the Minister thinks fit, delegate a function to which this section applies to any other servant of the Crown.”
- (4) Omit section 1(5) (meaning of “transfer of functions Order”). 25
- (5) In section 2 (power to authorise exercise of functions without approval etc.), in subsection (1)(a), for “Her Majesty’s Home Civil Service” substitute “the civil service (excluding the diplomatic service) within the meaning of Part 4 of the Constitutional Renewal Act 2009”.

29 Management of the civil service: supplementary 30

- (1) Any statutory power relating to the management of any part of the civil service has effect subject to section 27.
- (2) “Statutory power” means a power conferred by any other Act (whenever passed) or an instrument made under any other Act (whenever made).
- (3) Subsection (4) applies to any person (“P”) who – 35
 - (a) is a civil servant immediately before section 27 comes into force, and
 - (b) was appointed under powers that cease to be exercisable on that section coming into force.
- (4) From the time that section 27 comes into force, P’s appointment continues but as if made – 40
 - (a) if P is a member of the diplomatic service immediately before that time, under subsection (2) of that section, and

- (b) otherwise, under subsection (1) of that section.

Codes of conduct

30 Civil service code

- (1) The Minister for the Civil Service must issue a code of conduct for the civil service (excluding the diplomatic service). 5
- (2) For this purpose, the Minister for the Civil Service may issue separate codes of conduct covering civil servants who serve the Scottish Executive or the Welsh Assembly Government.
- (3) In this Part “civil service code” means a code of conduct issued under this section as it is in force for the time being. 10
- (4) The Minister for the Civil Service may not issue a civil service code unless the code has been laid in draft before Parliament and approved by a resolution of each House.
- (5) A civil service code forms part of the terms and conditions of service of any civil servant covered by the code. 15

31 Diplomatic service code

- (1) The Secretary of State must issue a code of conduct for the diplomatic service.
- (2) In this Part “diplomatic service code” means the code of conduct issued under this section as it is in force for the time being.
- (3) The Secretary of State may not issue the diplomatic service code unless the code has been laid in draft before Parliament and approved by a resolution of each House. 20
- (4) The diplomatic service code forms part of the terms and conditions of any civil servant covered by the code.

32 Minimum requirements for civil service and diplomatic service codes 25

- (1) This section sets out the provision that must be included in a civil service code or the diplomatic service code in relation to the civil servants covered by the code.
The code may include other provision as well.
- (2) The code must require civil servants who serve an administration mentioned in subsection (3) to carry out their duties for the assistance of the administration as it is duly constituted for the time being, whatever its political complexion. 30
- (3) The administrations are – 35
- (a) Her Majesty’s Government in the United Kingdom;
 - (b) the Scottish Executive;
 - (c) the Welsh Assembly Government.
- (4) The code must require that, so far as is consistent with discharging the duty referred to in subsection (2), civil servants carrying out their duties must have

- regard also to the responsibilities which the following have to scrutinise and challenge the activities of the administrations referred to in subsection (3) –
- (a) members of both Houses of Parliament,
 - (b) members of the Scottish Parliament, or
 - (c) members of the National Assembly for Wales. 5
- (5) The code must require civil servants to carry out their duties –
- (a) with integrity and honesty, and
 - (b) with objectivity and impartiality.
- (6) But the code need not –
- (a) require special advisers (see section 37) to carry out their duties with objectivity and impartiality, or 10
 - (b) include provision about special advisers that is included in the special advisers code (see section 33).
- (7) The code must allow a civil servant to complain to the Civil Service Commission if the civil servant believes – 15
- (a) that the civil servant is being required to act in a way that conflicts with the code, or
 - (b) that another civil servant has acted in a way that conflicts with the code.
- (8) The code may include provision about steps that must be taken by a civil servant before making a complaint. 20
- (9) The Commission –
- (a) must determine the procedures for the making of complaints (including complaints by persons other than civil servants) and for the investigation and consideration of complaints by the Commission;
 - (b) must consider a complaint if the complaint is made in accordance with those procedures; 25
 - (c) after considering a complaint, may make recommendations about how the complaint should be resolved.
- 33 Special advisers’ code**
- (1) The Minister for the Civil Service must issue a code of conduct for special advisers (see section 37). 30
 - (2) In this Part “special advisers’ code” means the code of conduct issued under this section as it is in force for the time being.
 - (3) The Minister for the Civil Service may not issue the code unless the code has been laid in draft before Parliament and approved by a resolution of each House. 35
 - (4) The special advisers’ code forms part of the terms and conditions of service of special advisers.

Appointment

- 34 Selections for appointments to the civil service** 40
- (1) This section is about how persons who are not civil servants are to be selected for appointment into the civil service.

- (2) A person’s selection must be on merit on the basis of fair and open competition.
- (3) The following selections are excepted from this requirement –
- (a) selection for an appointment if the appointment is to be made directly by Her Majesty;
 - (b) selection for an appointment to the diplomatic service as head of mission or as Governor of an overseas territory; 5
 - (c) selection for an appointment as special adviser (see section 37);
 - (d) a selection excepted by the recruitment principles (see section 36(1)(b)).
- (4) In determining for the purposes of subsection (1) whether or not a person is a civil servant, ignore any appointment for which the person was selected in reliance on subsection (3)(a), (b) or (c). 10

35 Recruitment principles

- (1) The Civil Service Commission must publish a set of principles to be applied for the purposes of the requirement in section 34(2).
- (2) Before publishing the set of principles (or a modification of the set of principles), the Commission must consult the Minister for the Civil Service about what the Commission proposes to publish. 15
- (3) In this Part “recruitment principles” means the set of principles published under this section as it is in force for the time being.
- (4) Appointing authorities must comply with the recruitment principles. 20
- (5) In this Part “appointing authority” means a person with power to make appointments in the civil service.

36 Approvals for selections and exceptions

- (1) The recruitment principles may include provision –
- (a) requiring the approval of the Civil Service Commission to be obtained for a selection which is subject to the requirement in section 34(2); 25
 - (b) excepting a selection from the requirement in section 34(2) for the purposes of section 34(3)(d);
 - (c) specifying terms and conditions which must be included in the terms and conditions of an appointment resulting from a selection made in reliance on section 34(3)(d). 30
- (2) The Commission may participate in the process for a selection for which its approval is required by provision within subsection (1)(a).
- (3) It is up to the Commission to decide how it will participate.
- (4) Provision within subsection (1)(b) may be included only if the Commission is satisfied that the provision is justified by the needs of the civil service. 35
- (5) Provision within subsection (1)(a) to (c) may be made in any way, including by reference to –
- (a) particular appointments or descriptions of appointments;
 - (b) the circumstances in which a selection is made; 40
 - (c) the circumstances of the person to be selected.

- (6) Provision within subsection (1)(a) to (c) may confer a discretion on the Commission.

Special advisers

37 Definition of special adviser

- (1) In this Part “special adviser” means a civil servant – 5
(a) by a minister directly,
(b) to assist that minister, and
(c) in accordance with subsections (2) and (3).
- (2) The appointment must be approved – 10
(a) if the appointing minister is a Minister of the Crown, by the Prime Minister, or
(b) if the appointing minister is a Scottish Minister or a Welsh Minister, by the First Minister for Scotland or Wales (as the case may be).
- (3) The appointment must be on terms that – 15
(a) are approved by the Minister for the Civil Service, and
(b) provide for the appointment to end not later than the time when the appointing minister’s term of office ends (see subsections (4) and (5)).
- (4) An appointing minister’s term of office ends – 20
(a) when the minister ceases to hold the ministerial office in relation to which the special adviser was appointed to assist the minister, or
(b) if earlier, at the end of the day after the relevant election day.
- (5) The relevant election day is – 25
(a) in relation to a person appointed by a Minister of the Crown, the day of the poll at the first parliamentary general election following the appointment;
(b) in relation to a person appointed by a Scottish Minister or a Welsh Minister, the day of the poll at the first ordinary or extraordinary general election for Scotland or Wales (as the case may be) following the appointment.

38 Limits on the numbers of special advisers 30

- (1) The total number of special advisers at any time must not exceed either – 35
(a) the prescribed limit on the total number of special advisers, or
(b) the prescribed limit on the number of special advisers who may be appointed by Ministers of the Crown, by Scottish Ministers or by Welsh Ministers.
- (2) “Prescribed limit” means the limit specified in an order made – 40
(a) in relation to special advisers appointed by Ministers of the Crown, by the Minister for the Civil Service;
(b) in relation to special advisers appointed by Scottish Ministers, by the First Minister for Scotland;
(c) in relation to special advisers appointed by Welsh Ministers, by the First Minister for Wales.
- (3) An order under subsection (2) is to be made by statutory instrument.

- (4) An order under subsection (2) does not come into effect unless a draft of the order has been laid before, and approved by a resolution of –
- (a) for an order under subsection (2)(a), each House of Parliament;
 - (b) for an order under subsection (2)(b), the Scottish Parliament;
 - (c) for an order under subsection (2)(c), the National Assembly for Wales. 5

39 Annual reports about special advisers

- (1) The Minister for the Civil Service must –
- (a) prepare an annual report about special advisers appointed by Ministers of the Crown, and
 - (b) lay the report before Parliament. 10
- (2) The First Minister for Scotland must –
- (a) prepare an annual report about special advisers appointed by Scottish Ministers, and
 - (b) lay the report before the Scottish Parliament.
- (3) The First Minister for Wales must – 15
- (a) prepare an annual report about special advisers appointed by Welsh Ministers, and
 - (b) lay the report before the National Assembly for Wales.
- (4) A report under this section must include information about, in particular – 20
- (a) the number and cost of the special advisers appointed by the ministers in question, and
 - (b) the qualifications of each special adviser to carry out the range of tasks assigned to them.

Additional functions of the Commission

40 Monitoring by the Commission 25

- (1) The Civil Service Commission –
- (a) may, if the Commission considers that there is good reason for doing so, investigate any matter the Commission considers appropriate in connection with the operation of any code issued under section 30, 31 or 33, and 30
 - (b) must carry out whatever reviews of recruitment policies and practices it thinks are necessary to establish whether the requirement in section 34(2) is being complied with.
- (2) For the purpose of subsection (1)(a), the Commission may require the Minister for the Civil Service or the Secretary of State to provide it with such information about the matter being investigated as the Commission may specify in the request. 35
- (3) For the purpose of subsection (1)(b), the Commission may require an appointing authority to provide it with information about – 40
- (a) selections which the authority has made, and
 - (b) the way in which those selections were made.
- (4) After carrying out any investigation or review under subsection (1), the Commission may make such recommendations as it considers to be

appropriate about how the matter investigated or reviewed should be resolved.

41 Arrangements for the Civil Service Commission to carry out additional functions

- (1) The Minister for the Civil Service and the Civil Service Commission may make arrangements for the Commission to carry out functions in relation to the civil service in addition to those conferred on it under the other provisions of this Part. 5
- (2) The Commission is to carry out those additional functions accordingly.

Definitions 10

42 List of definitions

In this Part—

- “appointing authority” is defined in section 35(5);
“civil servant” is read as stated in section 25(3);
“civil service” is read as stated in section 25(3); 15
“civil service code” is defined in section 30(3);
“diplomatic service” means Her Majesty’s diplomatic service;
“diplomatic service code” is defined in section 31(2);
“minister” means a Minister of the Crown, a Scottish Minister or a Welsh Minister; 20
“recruitment principles” is defined in section 35(3);
“special adviser” is defined in section 37;
“special advisers’ code” is defined in section 33(2).

PART 5

PARLIAMENTARY GENERAL ELECTIONS 25

Fixed term Parliaments

43 Dates of future parliamentary general elections

- (1) The next parliamentary general election is to take place on 7th May 2010.
- (2) Each subsequent parliamentary general election is to take place on the first Thursday in May in the fourth year after the previous parliamentary general election. 30
- (3) This section is subject to section 45.

44 Dissolution of Parliament

- (1) This present Parliament is to be dissolved on 7th April 2010.
- (2) This present Parliament may not be dissolved except as provided in subsection (1). 35

- (3) Each subsequent Parliament is to be dissolved 30 days before the parliamentary general election provided for in section 43(2).
- (4) No subsequent Parliament may be dissolved except as provided in subsection (3).
- 45 Power of House of Commons to vary the date of parliamentary general elections** 5
- (1) The House of Commons may, by resolution, specify that the day or days on which a parliamentary general election is to take place are to be either –
- (a) a day of the week other than Thursday, or
 - (b) a Saturday and Sunday. 10
- (2) But any day so specified must not be –
- (a) earlier than, or
 - (b) more than 6 days later than, the date provided for in section 43(1) or (2).
- 46 Amendment of the Representation of the People Acts** 15
- (1) The Secretary of State may by order make such amendments to the Representation of the People Acts as appear to the Secretary of State to be appropriate in consequence of sections 43 to 45.
- (2) An order under subsection (1) is to be made by statutory instrument.
- (3) No such order is to be made unless it has been laid in draft before Parliament and approved by a resolution of each House. 20
- General review of electoral system*
- 47 Citizens’ Assembly to review electoral system**
- (1) In the following provisions of this Part, “Citizens’ Assembly” means a body of persons to be appointed by the Prime Minister in accordance with section 48. 25
- (2) The Citizens’ Assembly is to have the functions conferred on it by this section.
- (3) The Citizens’ Assembly must examine existing arrangements for the holding of parliamentary general elections with a view to –
- (a) making proposals about what changes should be made,
 - (b) identifying any matter on which a referendum should be held, 30
 - (c) framing the question or questions to be put in such a referendum, and
 - (d) reporting to the Prime Minister on the Assembly’s proceedings.
- (4) Matters to be examined under subsection (3) include –
- (a) the electoral system used for conducting ballots for parliamentary general elections; 35
 - (b) other systems that are commonly in use to conduct ballots (in particular the systems for a single transferable vote, additional members and alternative votes);
 - (c) existing and other methods for voting (including postal voting and e-voting); 40

- (d) methods for encouraging voting at parliamentary general elections.
- (5) The Citizens’ Assembly may also examine such other matters in connection with the holding of parliamentary general elections as the Assembly may determine.
- (6) The Citizens’ Assembly may determine its own procedure. 5
- (7) The Secretary of State is under a duty to make available appropriate administrative support and assistance to the members of the Citizens’ Assembly in the discharge of their functions under this section.

48 Membership of Citizens’ Assembly

- (1) The Citizens’ Assembly is to be appointed as soon as is practicable after the coming into force of this section. 10
- (2) The Citizens’ Assembly is to consist of at least 100 members –
 - (a) not more than 30 of whom are to be drawn from persons nominated by the leader of each registered political party to which ten or more members of the House of Commons belongs, and 15
 - (b) the remainder being drawn from persons who, on the date of appointment –
 - (i) are entitled to vote as an elector at a parliamentary election, and
 - (ii) are not disqualified by subsection (3).
- (3) The persons disqualified by this subsection are any member of – 20
 - (a) the House of Commons;
 - (b) the House of Lords;
 - (c) the European Parliament who is elected in the United Kingdom;
 - (d) the Scottish Parliament;
 - (e) the National Assembly for Wales; 25
 - (f) the Northern Ireland Assembly;
 - (g) the London Assembly.
- (4) For the purposes of subsection (2)(a), appointments are to be made by the Prime Minister so that the number of appointees taken from the list put forward by each party leader is broadly equivalent to the party’s proportionate share of the total number of votes cast for all candidates at the last parliamentary general election taking place before the appointments are made. 30
- (5) For the purposes of subsection (2)(b), appointments are to be made of persons selected from the registers of parliamentary electors in accordance with a scheme set out by order made by the Secretary of State. 35
- (6) An order under subsection (5) is to be made by statutory instrument.
- (7) No such order is to be made unless it has been laid in draft before Parliament and approved by a resolution of each House.
- (8) “Registered political party” means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41). 40

49 Referendum on proposals made by Citizens' Assembly

- (1) This section applies where any matter is to be subject to a referendum in accordance with section 47(3)(b).
- (2) The Secretary of State must by order cause a referendum to be held.
- (3) An order under subsection (2) must specify – 5
 - (a) the question or questions to be asked in the referendum,
 - (b) the date of the referendum, and
 - (c) the referendum period.
- (4) The question or questions specified under subsection (3)(a) are to be as specified by the Citizens' Assembly under section 47(3)(c). 10
- (5) The date of the referendum –
 - (a) may be varied or revoked in a subsequent order if the Secretary of State thinks it is not appropriate for the referendum to be held on the date specified, but
 - (b) must not be later than 90 days after the date of publication of the report under section 47(3)(d) which relates to the referendum. 15
- (6) If the majority of voters in the referendum vote in favour of one or more proposals made by the Citizens' Assembly, the Secretary of State must take such steps as appear to the Secretary of State to be necessary to implement the proposals. 20
- (7) An order under this section –
 - (a) is to be made by statutory instrument, and
 - (b) is subject to annulment in pursuance of a resolution of either House of Parliament.

PART 6 25

CONDUCT OF MEMBERS OF THE HOUSES OF PARLIAMENT

*Conduct of Ministers***50 Ministerial Code**

- (1) The Prime Minister must issue a code of conduct for Ministers of the Crown.
- (2) In this Part “Ministerial code” means the code of conduct issued under this section as it is in force for the time being. 30
- (3) The Prime Minister may not issue the code unless the code has been laid in draft before Parliament and approved by a resolution of each House.
- (4) The Parliamentary Commissioner for Standards may, if the Commissioner considers that there is good reason for doing so, investigate any matter the Commissioner considers appropriate in connection with the operation of the Ministerial code. 35
- (5) The Parliamentary Commissioner for Standards may require any Minister of the Crown to provide the Commissioner with such information about the matter being investigated as the Commissioner may specify in the request. 40

- (6) After carrying out any investigation under this section, the Parliamentary Commissioner for Standards may make such recommendations as the Commissioner considers appropriate about how the matter investigated should be resolved.

Conduct of members of House of Lords

5

51 House of Lords: Officer to hear complaints about members

- (1) There is to be an Officer of the House of Lords (referred to in this Part as “the Officer”) who is to be appointed by the House of Lords for the purposes of this Part.
- (2) The person appointed to hold office in accordance with this section may be the same person as the person who holds the office of the House of Commons known as the Parliamentary Commissioner for Standards. 10
- (3) Dismissal of the Officer may be made only by resolution of the House of Lords and only on the ground that the House is satisfied that the Officer is unfit to hold office or unable to carry out the functions of the Officer. 15

52 Functions of the Officer

- (1) The Officer is to have –
- (a) the functions conferred by subsection (2), and
 - (b) such other functions as may be conferred by Standing Orders of the House of Lords. 20
- (2) The functions conferred by this subsection are –
- (a) to receive complaints about any failure by a member of the House of Lords to comply with any provision of a code of conduct adopted by Standing Order of the House;
 - (b) if the Officer considers it appropriate to do so, to investigate such complaints; 25
 - (c) to report to the House of Lords on any matter arising in the course of an investigation.
- (3) The Officer must include in a report under subsection (2)(c) a statement of –
- (a) findings of fact in the investigation, 30
 - (b) any finding that a member of the House of Lords has failed to comply with a code of conduct adopted by Standing Order of the House, and
 - (c) if the report contains one or more findings under paragraph (b), what (if any) sanctions should be imposed on the member under section 53.
- (4) Where the Officer decides to investigate a complaint under subsection (2)(b), the Officer must –
- (a) give written notice to any member of the House of Lords whose conduct is called into question by the complaint;
 - (b) give each member an opportunity to comment on the allegations made, call witnesses and examine other witnesses; 40
 - (c) comply with such other procedural safeguards applying to investigations by the Officer as are specified by Standing Order of the House.

- (5) The member of the House of Lords complained against has a right of appeal to the House of Lords Committee for Privileges about any statement made by the Officer under subsection (3)(b) or (c) and the Committee must report its finding to the House.

53 Sanctions for misconduct by members of House of Lords 5

- (1) This section applies –
- (a) in any case where the House of Lords receives a report under section 52 containing a statement as to which sanctions should be imposed for failure to comply with a code of conduct (see section 52(3)(c));
 - (b) in such other circumstances as may be specified by Standing Order, or other order or resolution, of the House of Lords. 10
- (2) The House of Lords may by resolution determine to reprimand the member.
- (3) The House of Lords may by resolution determine to suspend the member, for such period as is specified in the resolution, for sitting or voting in –
- (a) the House of Lords, 15
 - (b) a committee of that House, or
 - (c) a joint committee of that House.
- (4) The House of Lords may by resolution determine to disqualify the member for sitting or voting in –
- (a) the House of Lords, 20
 - (b) a committee of that House, or
 - (c) a joint committee of that House.
- (5) In any case within subsection (1)(a), the sanction or sanctions imposed must be as stated in the Officer’s report under section 52(3)(c) unless there is a resolution of the House of Lords stating that the exceptional circumstances of the case justify imposing such other sanction specified in this section as may be specified in the resolution. 25

54 Disqualification of members of House of Lords for certain offences

- (1) This section applies to any person (“P”) who is –
- (a) found guilty after the commencement of this section of one or more offences (whether in the United Kingdom or elsewhere), and 30
 - (b) sentenced or ordered to be imprisoned or detained indefinitely or for more than one year.
- (2) P is disqualified for sitting or voting in the House of Lords –
- (a) at any time while P is detained anywhere in the British Islands or the Republic of Ireland in pursuance of the sentence or order; 35
 - (b) at any time while P is unlawfully at large at a time when P would otherwise be so detained;
 - (c) at any time after P’s release.

Conduct of members of House of Commons 40

55 Sanctions for misconduct by members of House of Commons

- (1) This section applies where the Parliamentary Commissioner for Standards –

- (a) investigates any specific complaint that a member of the House of Commons has failed to comply with a provision of a code of conduct adopted by Standing Order of the House of Commons, and
 - (b) proposes to make a report to the House of Commons (or an appropriate Committee) which contains a finding that the member has failed to comply. 5
- (2) The report must also state what (if any) sanctions should be imposed on the member.
- (3) If the report contains a statement under subsection (2), the sanction or sanctions imposed must be as stated in the report unless there is a resolution of the House of Commons stating that the exceptional circumstances of the case justify imposing such other sanction as may be specified in the resolution. 10

PART 7

FINAL PROVISIONS

56 Meaning of “Minister of the Crown” 15

In this Act “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26).

57 Power to make consequential provision

- (1) A Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order make such provision as the Minister or Ministers consider appropriate in consequence of this Act. 20
- (2) An order under subsection (1) may –
- (a) amend, repeal or revoke any provision made by or under an Act;
 - (b) include transitional, transitory or saving provision.
- (3) An order under subsection (1) is to be made by statutory instrument. 25
- (4) A statutory instrument containing an order under subsection (1) which amends or repeals a provision of an Act may not be made unless the instrument has been laid in draft before Parliament and approved by a resolution of each House.
- (5) A statutory instrument containing an order under subsection (1) which does not amend or repeal a provision of an Act is subject to annulment in pursuance of a resolution of either House of Parliament. 30

58 Extent

An amendment or repeal contained in this Act has the same extent as the Act or relevant part of the Act to which the amendment or repeal relates (ignoring extent by virtue of an Order in Council). 35

59 Commencement

- (1) The following provisions of this Act come into force on the day this Act is passed –
- (a) this section, 40

- (b) section 58, and
 - (c) section 60.
- (2) The other provisions of this Act come into force on such day as may be appointed by order of a Minister of the Crown or two or more Ministers of the Crown acting jointly; and different days may be appointed for different purposes. 5
- (3) A Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.
- (4) An order under subsection (2) or (3) is to be made by statutory instrument. 10

60 Short title

This Act may be cited as the Constitutional Renewal Act 2009.

SCHEDULES

SCHEDULE 1

Section 19

CONSEQUENTIAL AMENDMENTS

PART 1

	GROUND RULES FOR ATTORNEY’S SUPERINTENDENCE OF DIRECTORS	5
	<i>Prosecution of Offences Act 1985 (c. 23)</i>	
1	After section 3(1) (DPP’s functions to be discharged under superintendence of Attorney) insert – “(1A) Subsection (1) is subject to sections 5 and 6 of the Constitutional Renewal Act 2009 (ground rules for superintendence).”	10
	<i>Criminal Justice Act 1987 (c. 38)</i>	
2	After section 1(2) (functions of Director of Serious Fraud Office to be discharged under superintendence of Attorney) insert – “(1A) Subsection (2) is subject to sections 5 and 6 of the Constitutional Renewal Act 2009 (ground rules for superintendence).”	15
	<i>Commissioners for Revenue and Customs Act 2005 (c. 11)</i>	
3	After section 36(1) (functions of Director of Revenue and Customs Prosecutions to be discharged under superintendence of Attorney) insert – “(1A) Subsection (1) is subject to sections 5 and 6 of the Constitutional Renewal Act 2009 (ground rules for superintendence).”	20
	<i>Serious Crime Act 2007 (c. 27)</i>	
4	(1) In Schedule 2, re-number the provisions listed in sub-paragraph (2) as sub-paragraph (1) of the paragraph and after sub-paragraph (1) insert – “(2) Sub-paragraph (1) is subject to sections 5 and 6 of the Constitutional Renewal Act 2009 (ground rules for superintendence).”	25
	(2) The provisions are –	
	(a) paragraph 3 (DPP’s functions in relation to serious crime prevention orders to be discharged under superintendence of Attorney);	
	(b) paragraph 8 (functions of Director of Revenue Customs Prosecutions in relation to serious crime prevention orders to be discharged under superintendence of Attorney);	30

- (c) paragraph 14 (functions of Director of Serious Fraud Office in relation to serious crime prevention orders to be discharged under superintendence of Attorney).

PART 2

NEW PROVISIONS ABOUT TENURE OF OFFICE OF DIRECTORS

5

Prosecution of Offences Act 1985 (c. 23)

- 5 Omit sections 2 and 15(7) (appointment of DPP etc.).

Criminal Justice Act 1987 (c. 38)

- 6 In section 1(2) (appointment and superintendence of Director of Serious Fraud Office), omit “The Attorney General shall appoint a person to be” and “, and he”. 10

- 7 In Schedule 1, omit paragraph 1 (remuneration of Director).

Commissioners for Revenue and Customs Act 2005 (c. 11)

- 8 In section 34 (Revenue and Customs Prosecution Office) – 15
 (a) omit subsection (1), and
 (b) in subsection (2), for “The Director” substitute “The Director of Revenue and Customs Prosecutions”.

- 9 In Schedule 3 omit – 20
 (a) paragraphs 1 to 3 (qualification and remuneration of Director etc.), and
 (b) in paragraph 8 (Director and members of office to be civil servants) “the Director or”.

PART 3

ATTENUATION OF ATTORNEY’S PROSECUTION CONSENT FUNCTIONS

Prosecution of Offences Act 1985 (c. 23) 25

- 10 (1) In section 1(7) (prosecution consents etc.) – 30
 (a) for “enactment (whenever passed)” substitute “enactment or provision of subordinate legislation (whenever passed or made)”, and
 (b) after “that enactment” insert “or provision”.

- (2) After section 1(7) insert –

“(8) “Subordinate legislation” has the same meaning as it has in the Interpretation Act 1978.”

- 11 In section 25 (consents to prosecutions etc.), in subsection (1)(a) and (b), for “or the Director” substitute “the Director or, in the absence of that Director, a person authorised by that Director”. 35

Criminal Justice Act 1987 (c. 38)

- 12 In section 1 (the Serious Fraud Office), after subsection (8) insert –
- “(8A) Where any enactment or provision of subordinate legislation (whenever passed or made) –
- (a) prevents any step from being taken without the consent of the Director or without his consent or the consent of another, or 5
 - (b) requires any step to be taken by or in relation to the Director, any consent given by or, as the case may be, step taken by or in relation to, a member so designated is to be treated, for the purposes of that enactment or provision, as given by or, as the case may be, taken by or in relation to the Director. 10
- (8B) “Subordinate legislation” has the same meaning as it has in the Interpretation Act 1978.”

Commissioners for Revenue and Customs Act 2005 (c. 11) 15

- 13 In section 35 (prosecutors), after subsection (3) insert –
- “(4) Where any enactment or provision of subordinate legislation (whenever passed or made) –
- (a) prevents any step from being taken without the consent of the Director or without his consent or the consent of another, or 20
 - (b) requires any step to be taken by or in relation to the Director, any consent given by or, as the case may be, step taken by or in relation to, a Prosecutor is to be treated, for the purposes of that enactment or provision, as given by or, as the case may be, taken by or in relation to the Director. 25
- (5) “Subordinate legislation” has the same meaning as it has in the Interpretation Act 1978.”

Armed Forces Act 2006 (c. 52)

- 14 In section 365 (prosecuting officers), after subsection (4) insert –
- “(4A) Where any enactment or provision of subordinate legislation (whenever passed or made) – 30
- (a) prevents any step from being taken without the consent of the Director or without his consent or the consent of another, or
 - (b) requires any step to be taken by or in relation to the Director, any consent given by or, as the case may be, step taken by or in relation to, a prosecuting officer is to be treated, for the purposes of that enactment or provision, as given by or, as the case may be, taken by or in relation to the Director. 35
- (4B) “Subordinate legislation” has the same meaning as it has in the Interpretation Act 1978.” 40

PART 4

ABOLITION OF NOLLE PROSEQUI

Contempt of Court Act 1981 (c. 49)

- | | | |
|----|---|---|
| 15 | In Schedule 1 (time when proceedings are active for the purposes of section 2), in paragraph 7(a), for “or a nolle prosequi entered” substitute “or if, in Northern Ireland, a nolle prosequi entered”. | 5 |
|----|---|---|

SCHEDULE 2

Section 26

CIVIL SERVICE COMMISSION

PART 1

THE COMMISSIONERS 10

Membership of the Commission

- | | | |
|---|--|----|
| 1 | (1) The Civil Service Commission (“the Commission”) is to consist of at least seven members. | |
| | (2) One of those is to be the First Civil Service Commissioner appointed under paragraph 2. | 15 |
| | (3) The others are to be Civil Service Commissioners appointed under paragraph 3. | |

Appointment of First Civil Service Commissioner

- | | | |
|---|---|----|
| 2 | (1) This paragraph is about the appointment of the First Civil Service Commissioner (“First Commissioner”). | 20 |
| | (2) The First Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service. | |
| | (3) Before making a recommendation, the Minister must consult – | |
| | (a) the First Ministers for Scotland and Wales, and | |
| | (b) the relevant opposition leaders (see sub-paragraph (7)). | 25 |
| | (4) The First Commissioner holds office for five years. | |
| | (5) The other terms on which the First Commissioner holds office are determined by the Minister for the Civil Service. | |
| | (6) A person cannot be appointed as First Commissioner more than once. | |
| | (7) The relevant opposition leaders are the registered leaders of the registered parties in opposition to Her Majesty’s Government in the United Kingdom which had the highest and second highest national vote at the previous parliamentary general election. | 30 |
| | (8) In sub-paragraph (7) – | |

“registered leader”, in relation to a party, means the person registered as that party’s leader in accordance with section 24 of the Political Parties, Elections and Referendums Act 2000 (c. 41);

“registered party” means a party registered in a register of political parties maintained by the Electoral Commission in accordance with section 23 of that Act.

5

Appointment of Civil Service Commissioners

3 (1) This paragraph is about the appointment of Civil Service Commissioners (“Commissioners”).

(2) A Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service.

10

(3) The Minister must not make a recommendation without the agreement of the First Commissioner, unless the Minister is satisfied that it is appropriate to do so.

(4) A Commissioner holds office for five years.

15

(5) The other terms on which a Commissioner holds office are determined by the Minister.

(6) The Minister must not make a determination without the agreement of the First Commissioner, unless the Minister is satisfied that it is appropriate to do so.

20

(7) A person cannot be appointed as a Commissioner more than once.

(8) A person cannot be a Commissioner and First Commissioner at the same time.

(9) If the office of First Commissioner is vacant, the Minister may authorise a Commissioner to carry out functions of First Commissioner until the vacancy is filled.

25

(10) Sub-paragraph (11) applies in relation to the appointment as Commissioner of a person who already holds office under the Crown or an enactment.

(11) The terms determined under sub-paragraph (5) may –

(a) provide for the person to cease to hold office as Commissioner if the person ceases to hold the office mentioned in sub-paragraph (10);

30

(b) restrict the functions that the person may carry out as Commissioner.

Payment of remuneration and allowances etc

4 (1) The terms mentioned in paragraph 2(5) or 3(5) may provide for the Commission –

35

(a) to pay remuneration and allowances to the person appointed;

(b) to make provision for a pension in relation to that person.

(2) The Commission must make the payments or provision accordingly.

Resignation or removal from office

5 (1) This paragraph is about resignation or removal from the office of First Commissioner or Commissioner.

40

- (2) A person may resign from office by giving written notice to the Minister for the Civil Service.
- (3) Her Majesty may, on the recommendation of the Minister, remove a person from office if a condition in sub-paragraph (4) is met.
- (4) The conditions are that— 5
- (a) a person is absent from three successive meetings of the Commission without the Commission’s approval;
 - (b) the person is convicted of an offence (see sub-paragraph (5));
 - (c) the person becomes bankrupt (see sub-paragraph (6));
 - (d) the person is unfit or unable to carry out the functions of the office. 10
- (5) For the purpose of determining if a person is convicted of an offence—
- (a) it does not matter where the person is convicted;
 - (b) an act punishable under the law of a territory outside the United Kingdom constitutes an offence for the purposes of this paragraph (however it is described in that law). 15
- (6) A person becomes bankrupt if—
- (a) a court in England or Wales makes a bankruptcy order in relation to the person,
 - (b) a court in Scotland awards sequestration of the person’s estate, or
 - (c) a court in Northern Ireland adjudges the person bankrupt. 20

Compensation for loss of office of First Commissioner

- 6 The Minister for the Civil Service may direct the Commission to pay compensation if—
- (a) a person ceases to hold office as First Commissioner, and
 - (b) the Minister is satisfied that, because of the circumstances in which the person ceases to hold office, compensation should be paid to that person. 25

PART 2

THE COMMISSION

Status of the Commission and its property 30

- 7 (1) The Commission is not to be regarded—
- (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The Commission’s property is not to be regarded as property of, or held on behalf of, the Crown. 35

Powers

- 8 (1) The Commission may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.
- (2) But the Commission may not borrow money except with the agreement of the Minister for the Civil Service. 40

- (3) Nothing in this Schedule which specifies powers of the Commission limits the generality of sub-paragraph (1).

Committees

- 9 (1) The Commission may establish committees.
(2) A committee of the Commission may establish sub-committees. 5
(3) Members of a committee or sub-committee may include persons who are not members of the Commission.

Procedure and proceedings

- 10 (1) The Commission may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum. 10
(2) The validity of proceedings of the Commission or a committee or sub-committee is not affected by –
(a) a vacancy among the members, or
(b) a defect in the appointment of a member.

Staff 15

- 11 The Commission may employ staff.
12 Employees of the Commission are not to be regarded as –
(a) servants or agents of the Crown, or
(b) enjoying any status, immunity or privilege of the Crown.

Pensions 20

- 13 (1) Employment by the Commission is included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 (c. 11) may apply.
(2) The office of First Commissioner is included among the offices to which such a scheme may apply. 25
(3) Accordingly, in Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of that Act may apply) –
(a) at the end of the list of “Royal Commissions and other Commissions” insert “Civil Service Commissioner”, and
(b) in the list of “Offices” the reference to the First Civil Service Commissioner is to be read as a reference to the office of First Commissioner. 30
(4) The Commission must pay the Minister for the Civil Service the sums determined by the Minister in relation to any increase attributable to this paragraph in the sums payable out of money provided by Parliament under the Superannuation Act 1972. 35
(5) The payments must be made at the times directed by the Minister.

Arrangements for assistance

- 14 (1) The Commission may make arrangements with other persons for the provision of assistance to the Commission.
- (2) In particular, arrangements may be made with the Minister for the Civil Service for civil servants to provide assistance. 5
- (3) Arrangements may provide for the making of payments by the Commission.

Delegation

- 15 (1) The Commission may delegate functions to –
- (a) any of its members;
 - (b) any of its committees; 10
 - (c) any of its employees;
 - (d) a person with whom arrangements are made under paragraph 14 or any person (including a civil servant) assisting the Commission under such arrangements.
- (2) A committee may delegate functions (including functions delegated to it) to a sub-committee. 15

Financial provisions

- 16 (1) The Minister for the Civil Service must pay to the Commission the sums determined by the Minister as appropriate for, or in connection with, the carrying out of the Commission's functions. 20
- (2) When making a payment, the Minister may impose conditions –
- (a) about how some or all of the money is to be used;
 - (b) requiring the Commission to follow specified procedures in relation to its costs and expenditure.
- (3) Before making a determination under sub-paragraph (1) or imposing conditions under sub-paragraph (2), the Minister must consult the Commission. 25

Accounts

- 17 (1) The Commission must keep proper accounts and proper records in relation to them. 30
- (2) The Commission must prepare a statement of accounts for each financial year (see paragraph 19).
- (3) The statement must give a true and fair view of –
- (a) the statement of the Commission's affairs at the end of the financial year, and 35
 - (b) the Commission's income and expenditure and cash flows in the financial year.
- (4) The statement must be in compliance with any directions given by the Minister for the Civil Service with the Treasury's approval as to –
- (a) the information to be contained in the statement, 40
 - (b) the manner in which the information is to be presented, or

- (c) the methods and principles according to which the statement is to be prepared.
- (5) The Commission must send the statement to the Minister at such time as the Minister may direct.
- (6) The Minister must then send the statement to the Comptroller and Auditor General. 5
- (7) The Comptroller and Auditor General must—
 - (a) examine, certify and report on the statement, and
 - (b) lay copies of the report before Parliament (unless it has been arranged for the Minister to do so). 10

Reports

- 18 (1) The Commission—
- (a) must, as soon as is practicable after the end of each financial year (see paragraph 19), prepare a report about the carrying out of its functions during the year, and 15
 - (b) may, in exceptional cases, prepare a report at any other time about any matter relating to the carrying out of its functions.
- (2) As soon as is practicable after preparing a report under sub-paragraph (1), the Commission must give a copy of the report to the Minister for the Civil Service and to the First Ministers for Scotland and Wales. 20
- (3) The Commission must then publish the report in the way the Commission thinks appropriate.
- (4) The Minister for the Civil Service must lay a copy of the report before Parliament (unless it has been arranged for the Comptroller and Auditor General to do so). 25
- (5) The First Minister for Scotland must lay a copy of the report before the Scottish Parliament.
- (6) The First Minister for Wales must lay a copy of the report before the National Assembly for Wales.

Meaning of “financial year” 30

- 19 For the purposes of paragraphs 17 and 18, each of the following is a “financial year”—
- (a) the period which begins when section 26 comes into force and ends with the following 31st March;
 - (b) each successive period of 12 months. 35

Documentary evidence

- 20 The application of the Commission’s seal is to be authenticated by the signature of any of the following—
- (a) a member of the Commission;
 - (b) if the Commission’s staff includes a chief executive, the chief executive; 40

- (c) any person authorised (whether generally or specifically) for the purpose by anyone within sub-paragraph (a) or (b).
- 21 Any contract of instrument which, if entered into or executed by an individual, would not need to be under seal, may be entered into or executed on behalf of the Commission by any of the following – 5
- (a) a member of the Commission;
- (b) if the Commission’s staff includes a chief executive, the chief executive;
- (c) any person authorised (whether generally or specifically) for the purpose by anyone within sub-paragraph (a) or (b). 10
- 22 A document purporting to be duly executed under the Commission’s seal or signed on its behalf –
- (a) is to be received in evidence, and
- (b) is to be taken to be executed or signed in that way, unless the contrary is proved. 15

PART 3

TRANSITIONAL PROVISION RELATING TO THE OLD COMMISSION

Head of the old commission to become First Commissioner

- 23 (1) The person who is the head of the old commission (see paragraph 28) immediately before section 26 comes into force becomes the First Commissioner on that section coming into force. 20
- (2) Sub-paragraphs (3) and (4) apply instead of paragraph 2(4) and (5).
- (3) The person holds office as the First Commissioner for a period equal to the remaining part of the period for which the person was appointed as head of the old commission. 25
- (4) The other terms on which the person holds office as the First Commissioner are –
- (a) the same terms as those on which the person held office as head of the old commission, or
- (b) if the person agrees, the terms determined by the Minister for the Civil Service. 30
- (5) Paragraph 4 applies for the purposes of sub-paragraph (4)(b).
- (6) The person’s becoming First Commissioner as a result of this paragraph is not an appointment for the purposes of paragraph 2(6).

Restriction on period of office if First Commissioner is former head of the old commission 35

- 24 (1) This paragraph applies if the person who is the First Commissioner is a former head of the old commission (see paragraph 28).
- (2) The person’s period of office mentioned in paragraph 2(4) or 23(3) is reduced so far as necessary to ensure compliance with the five year rule.
- (3) The five year rule is that the total of the following must not exceed five years – 40

- (a) the period or periods for which the person holds office as the First Commissioner;
- (b) the period or periods for which the person was head of the old commission.

Members of the old commission to become Commissioners 5

- 25 (1) The persons who are members of the old commission (see paragraph 28) immediately before section 26 comes into force become Commissioners on that section coming into force.
- (2) Sub-paragraph (1) does not apply to the person who is the head of the old commission. 10
- (3) Sub-paragraphs (4) and (5) apply instead of paragraph 3(4) and (5).
- (4) A person holds office as Commissioner for a period equal to the remaining part of the period for which the person was appointed as a member of the old commission.
- (5) The other terms on which the person holds office as a Commissioner are – 15
- (a) the same terms as those on which the person held office as a member of the old commission, or
 - (b) if the person agrees, the terms determined by the Minister for the Civil Service.
- (6) Paragraph 4 applies for the purposes of sub-paragraph (5)(b). 20
- (7) The person’s becoming Commissioner as a result of this paragraph is not an appointment for the purposes of paragraph 3(7).

Restriction of period of office for former member of old commission

- 26 (1) This paragraph applies if a person who is a Commissioner is a former member of the old commission. 25
- (2) The person’s period of office mentioned in paragraph 3(4) or 25(4) is reduced so far as necessary to ensure compliance with the five year rule.
- (3) The five year rule is that the total of the following must not exceed five years –
- (a) the period or periods for which the person holds office as Commissioner; 30
 - (b) the period or periods for which the person was a member of the old commission.
- (4) Sub-paragraph (3)(b) does not include any period for which the person was also head of the old commission. 35

Carrying out of functions by old commission

- 27 (1) During the preparatory period the old commission (see paragraph 28) may carry out, in the name and on behalf of the Commission, any functions conferred on the Commission by this Schedule.
- (2) The “preparatory period” is the period that – 40
- (a) starts when this Act is passed, and

(b) ends when section 26 comes into force.

Meaning of “member of old commission”

- 28 (1) A person is a “member of the old commission” if the person is one of Her Majesty’s Civil Service Commissioners for the purposes of the Civil Service Order in Council 1995.
- (2) References to the “old commission” are to be read accordingly.
- (3) A person is the “head of the old commission” if the person is the First Civil Service Commissioner in relation to the old commission.

Constitutional Renewal Bill [HL]

A

B I L L

To repeal sections 132 to 138 of the Serious Organised Crime and Police Act 2005; to make provision relating to the Attorney General; to make provision relating to the ratification of treaties and to participation in armed conflict by the United Kingdom; to make provision relating to the civil service; to make provision relating to parliamentary general elections; to make provision relating to the conduct of members of Parliament; and for connected purposes.

Lord Tyler

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