

EVIDENCE ON BEHALF OF THE EXECUTIVE COMMITTEE OF THE BETTER GOVERNMENT INITIATIVE* TO THE JOINT COMMITTEE ON THE CONSTITUTIONAL REFORM BILL

The main focus of The Better Government Initiative's work is on the operational effectiveness of government. We therefore strongly support the Government's proposals to give additional powers to the legislature and to legislate on the status and role of the Civil Service.

However, we consider that, notwithstanding the inclusion of some matters of broad constitutional principle such as the use of the Royal Prerogative, the Bill does not go far enough in strengthening the relationship between Parliament, the executive and the people to warrant the title "constitutional renewal". As our first reactions to the Green Paper (submitted on 16 July) indicated, we believe more should be done by the executive and Parliament working together to improve the processes required to ensure that government decisions are soundly based, operationally effective and acceptable to the electorate. If this is not done an opportunity will be missed to produce a fuller, more effective and more convincing package.

Preparation of policies and legislation

An important part of our unwritten constitution is that governments, while necessarily having differences of approach reflecting the political platforms on which they are elected, will act efficiently and disinterestedly in developing and implementing policies and will be ready to justify their decisions to Parliament and the public.

We were therefore concerned that the White paper and the Bill do not adequately address key issues which are essential for effective and transparent government. These are:

- the setting and achievement of high standards for the preparation of legislation and major policy proposals;
- the routine use of consultation documents — expressed in terms that enable both Parliament and the public to follow the argument — that make it clear on what evidence policies have been based and why particular options have been chosen;
- a reduction in the volume of legislation;

** The Better Government (BGI) is a group of former civil servants, academics, journalists and politicians who are interested in improving the processes of government. We have recently, after two broadly based conferences, published a series of recommendations about how this might be done covering both the executive and legislature ("Governing Well", January 2008). BGI reports and papers are available on our website at www.bettergovernmentinitiative.co.uk.

- strengthening the capacity of Parliament to hold the government to account (one of the government's own express aims).

The four are of course closely linked. Rigorous standards of policy preparation backed by consultation processes that engage all those with an interest in the proposals including, crucially, those who will be responsible for implementing them, would reduce the number of flawed Acts requiring adjustment and amendment in subsequent legislation. Strengthened Parliamentary scrutiny would be a powerful disincentive to rushed or inadequate preparation.

The BGI's report "*Governing Well*" includes a wide range of recommendations that are relevant to these issues. Those proposals that are perhaps most relevant in the context of the Constitutional Renewal Bill are:

- that the Government should publicly commit itself to improving standards of preparation through specific procedures for the conduct of Cabinet business, including appropriate processes of consultation;
- that the powers of Parliament to scrutinise Government policies should be enhanced, in particular by strengthening Select Committees' effectiveness and prestige by freeing the selection of Chairs and members from control by the Whips; by raising their pay to levels closer to those of Government appointments; by strengthening their powers to call for papers and information, to promote debates on substantive motions and to propose their own bills; and by ensuring that they have the necessary staff resources to discharge their scrutiny role thoroughly and effectively.

We have recommended that these proposals should be implemented without waiting for the enactment of the Constitutional Renewal Bill, through means that do not require legislation (for example, improved standards of preparation could be secured through a Parliamentary Resolution backed by Prime Ministerial guidance to Ministers). The Committee may however wish to consider, if they agree that action on these lines is desirable, whether it should be underpinned by specific provisions within the Constitutional Renewal Bill requiring the Government to take the necessary steps.

We are concerned that even where the White Paper proposes additional tasks for Committees, such as approval of certain key public servants, the resource implications have not been fully considered. The Liaison Committee has noted that, although they consider at present resources are "roughly appropriate", they need to be kept under review.

On the specific issue of post-legislative scrutiny, we warmly welcome the Government's

decision to proceed, but we have reservations about certain operational aspects of the proposals on which we have written to the Leader of the House of Commons and to the Chairs of relevant Select Committees. Our main point is that unless Governments provide an identifiable definition of the purpose and intended effects of legislation when it is considered by Parliament it will be much more difficult to get the full benefits of post-legislative scrutiny. The text of our exchange of correspondence with the Leader of the House of Commons is on our website.

The Civil Service

The BGI regards the maintenance of an effective Civil Service with the core values of integrity, honesty, objectivity and impartiality (including political impartiality) as a crucial instrument of good government, supporting Ministers of different political persuasions in policy making and the delivery of services. The effectiveness of the Civil Service will be best secured, and its core values maintained, if its members are appointed and promoted on merit.

We welcome the decision to enshrine these principles and the role of the Civil Service Commission in statute provided that the Bill does in practice safeguard and potentially strengthen the role and effectiveness of the Civil Service and the contribution of the Commission. To achieve this we believe that some amendments are needed. We propose the inclusion of:

- a duty of Ministers to uphold the political impartiality of the civil service rather than relying (we presume) on paragraph 56 of the Ministerial Code;
- a duty of Ministers, also in the Ministerial Code, “to give fair consideration and due weight to informed and impartial advice from civil servants” as well as from other sources and to ensure that opportunity is offered to provide that advice;
- a duty of civil servants not only to serve the Government of the day, but also to behave in such a way as to be able to secure the confidence of a future administration of a different political persuasion;
- a provision that promotion within the Home Civil Service and the Diplomatic Service is to be based on merit and subject to regulation by the Civil Service Commission;
- a specific provision, on the lines of the earlier draft Bill, describing the functions that Special Advisers cannot perform and preventing them from commissioning work from civil servants (the present draft authorising them to “assist” Ministers could be taken to cover every action performed by Civil Servants);

- a limit on the use of Special Advisers either by numbers or by a financial constraint as Lord Butler, a member of the BGI has proposed. We also support his proposal that Special Advisers should have a separate status from Civil Servants given the extent of the differences in the values they are expected to observe and their rules of appointment;

provision for the Civil Service Code, and that for Special Advisers, to be subject to approval or amendment by Parliament (preferably by Affirmative Resolution);

- power for the Civil Service Commission to undertake inquiries relating to the operation of the Civil Service and Special Advisers' Codes even if not arising as a result of complaints, in particular to establish if the Civil Service provisions of the Bill were being achieved in practice.

We also wish to comment on some of the questions set by the Committee.

- We believe that the Civil Service should be answerable to the Government and not to Parliament. However the effect of the Bill, particularly with the amendments we propose, would be likely to increase transparency (for example in considering amendments to the Civil Service Code) and openness to public scrutiny.
- We consider that more justification is needed than has so far been provided for the exceptions in Clause 34(3) to the requirement for selection on merit on the basis of fair and open competition. Further justification is also required for the exclusion of the bodies listed in Clause 25(2) from the application of the Bill.

We think it important that, in ensuring that appointments are made on merit on the basis of fair and open competition, the Civil Service Commission recognises the need for the appointment and promotion system to take account of departments' requirement for planning for succession in the longer term.

Finally, Sir Thomas Legg, who also contributes to the BGI's work, has pointed out that Clause 25 gives no precise definition of "the civil service of the State", nor is there anything further about it in the Explanatory Notes. The Committee may wish to establish whether this is because the meaning of the expression is thought to be sufficiently clear in law or because there are underlying difficulties about defining what the Civil Service is for the purposes of the Bill.