

# CONSTITUTIONAL REFORM AND GOVERNANCE ACT 2010\*

(2010 c.25)

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An Act to make provision relating to the civil service of the State; to make provision in relation to section 3 of the Act of Settlement; to make provision relating to the ratification of treaties; to make provision relating to the counting of votes in parliamentary elections; to amend the Parliamentary Standards Act 2009 and the European Parliament (Pay and Pensions) Act 1979 and to make provision relating to pensions for members of the House of Commons, Ministers and other office holders; to make provision for treating members of the House of Commons and members of the House of Lords as resident, ordinarily resident and domiciled in the United Kingdom for taxation purposes; to amend the Government Resources and Accounts Act 2000 and to make corresponding provision in relation to Wales; to amend the Public Records Act 1958 and the Freedom of Information Act 2000. [8th April 2010]

## PARLIAMENTARY DEBATES

*Hansard*, HC Vol.496, col.602 (1R); Vol.497, col.799 (2R) (Carry-over Motion); Vol.498, col.752, 873 (Committee Stage); Vol.501, col.141 (1R) (2R); Vol.504, cols 169 (Programme Motion) (Committee Stage), 689 (Committee Stage); Vol.505, cols 47 (Money Resolution) (Programme Motion) (Committee Stage), 775 (Money Resolution), 790 (Committee Stage); Vol.506, cols 808 (Money Resolution), 815 (Programme Motion), 829 (Remaining Stages); Vol.508, cols 1242 (Lords’ Amendments), 1256 (Royal Assent); HL Vol.718, cols 958 (2R), 1294 (Order of Consideration Motion), 1609 (Committee Stage) (Remaining Stages), 1738 (Royal Assent). Royal Assent: April 8, 2010.

## INTRODUCTION AND GENERAL NOTE

*Summary: constitutional change in the United Kingdom*

The Constitutional Reform and Governance Act 2010 (c.25) (“the Act”)—dealing with a truncated handful of discrete issues—follows the more significant Constitutional Reform Act 2005 (c.4) (“CRA 2005”); that reformed the office of lord chancellor (failing abolition); and created the United Kingdom supreme court, which opened for business on October 1, 2009 and provided for judicial appointments and removals.

New Labour earned its reputation for incremental constitutional change in the United Kingdom, with: human rights; devolution; House of Lords reform; freedom of information; electoral reform and changes to the House of Commons. Ironically, Tony Blair, as Prime Minister (1997–2007), had little intellectual interest in the subject. Not so Gordon Brown, who took over in June 2007. However, the seminal Green Paper, *The Governance of Britain [sic]* of July 2007 (see further below), worked up in Whitehall before he became Prime Minister, was diluted considerably by departments—in the context of the global recession in the summer of 2008 and the scandal about MPs’ and peers’ expenses in May 2009 (and after)—before the Constitutional Reform and Governance Bill (“the Bill”) appeared belatedly in July 2009 (after two years).

This showed that the Government had become all too accustomed to exercising state power, after more than 12 years in office. But the Government’s management of the Bill, between July 2009 and April 2010, also proved inept.

The Bill—when it left the Commons for the Lords in March 2010—dealt with: the civil service; treaties; a referendum on voting systems; parliamentary standards; House of Lords reform; MPs and peers’ tax; public order; human rights; courts and tribunals; national audit; financial reporting; and public records and freedom of information. By the time it became the Act, following speedy legislative wash up in the Lords and Commons (the General Election being announced on April 6, 2010), the following parts had disappeared in their entirety: referendum on voting systems; House of Lords reform; public order; human rights; courts and tribunals; and national audit. (This reduction is shown in tabular form below.)

David Howarth MP, for the Liberal Democrats, said at third reading in the House of Commons on March 2, 2010:

“The Government never wanted it to be a constitutional reform Bill in the sense that it was about the constitution of the country. The long title was never designed to allow extensive debate about any topic of constitutional reform. It was specifically designed to describe a small number of specific reforms. Having set out on that route, the Government then added more and more specific topics without there being any great theme.” (*Hansard*, Vol.506, col.909.)

Lord Pannick QC, a cross bencher, said at second reading in the House of Lords on March 24, 2010:

“I hope that the Minister and the Government will have received and understood the message from all parts of the House in this debate agreeing in substance with the view of your Lordships’ Constitution Committee [see below] that the Bill is simply not suitable for a wash-up procedure. The irony, of course, is that the Government’s treatment of this constitutional reform Bill as a political weapon—because that is what it is—to be manipulated from time to time for partisan purposes, irrespective of basic constitutional proprieties, demonstrates with clarity the urgent need for fundamental reform of the machinery of government in this country.” (*Hansard*, Vol.718, col.996.)

*Relevant documents and reports*

There is a relatively modest amount of literature, emanating from principally the Ministry of Justice (“MOJ”) (created in May 2007). The lord chancellor, and secretary of state, from June 28, 2007, had been Jack Straw MP—the first lord commoner! The other departmental ministers involved in the Bill were: Michael Wills MP (a former media colleague of Lord Mandelson’s); and Lord Bach, a barrister in Leicester.

The parliamentary literature, not surprisingly given the subject, is more substantial, and is interleaved chronologically below.

(1) *The Governance of Britain (Cm.7170)*

Jack Straw published this Green Paper, which must have been gestating in the MOJ in the wake of the CRA 2005, on July 3, 2007. He, and Gordon Brown, wrote:

“We want to forge a new relationship between government and citizen, and begin the journey towards a new constitutional settlement—a settlement that entrusts Parliament and the people with more power.” (p.5.)

The Green Paper (which called for a national conversation) dealt generally and widely with: limiting the powers of the executive (including the royal prerogative); making the executive more accountable; re-invigorating democracy; and a number of citizen/state issues.

It ended limply:

“It is clear that neither a British Bill of Rights and Duties nor a written constitution could come into being except over an extended period of time, through extensive and wide consultation, and not without broad consensus upon the values upon which they were based and the rights and responsibilities which derived from them.” (p.63.)

(2) *Consultation, etc.*

The governance of Britain became a programme of the UK Government (a website being launched on December 10, 2007).

Five consultations and a review were launched: on flying the union flag from government buildings (July 25, 2007); the role of the attorney general (July 26, 2007); Lord Goldsmith QC’s (the former attorney general) review of citizenship (October 5, 2007); judicial appointments (October 25, 2007); managing protest around parliament (October 25, 2007); and war powers and treaties: limiting executive powers (October 25, 2007).

(3) *The Governance of Britain: Constitutional Renewal (Cm.7342-I/II/III)*

On March 25, 2008, Jack Straw published this White Paper in three volumes (the second volume being a draft constitutional renewal Bill [see below] and the third an analysis of the consultations).

The Government revealed its policy proposals in eight areas: managing protest around parliament; the attorney general; judicial appointments; treaties; civil service; war powers; flag flying; and other policies. On each area, it referred back to the Green Paper, then to the relevant consultation, followed by “the way forward”.

A number of particular white, and other, papers had preceded, and followed, on: voting systems (January 24, 2008); post-legislative scrutiny (March 20, 2008); weekend voting (June 24, 2008); House of Lords reform (July 14, 2008); and very belatedly, the royal prerogative (October 25, 2009).

(4) *The draft constitutional renewal Bill (March 25, 2008)*

This was published along with the White Paper, with 44 clauses and 4 Schedules. It dealt with: demonstrations in the vicinity of parliament; the attorney general and prosecutions; courts and tribunals; ratification of treaties; the civil service; and final provisions.

Jack Straw made a statement to the House of Commons (which was repeated by a junior justice minister in the House of Lords): *Hansard*, HC Vol.474, col.21; HL Vol.700, col.458. Lord Kingsland for the Conservatives criticised the idea that the royal prerogative explained the strength of the executive: “[I]t has been the passage of Bills giving the Executive increasing delegated legislative powers to make orders and statutory instruments” (*Hansard*, Vol.700, col.463).

Two parliamentary committees considered the draft constitutional renewal Bill. This was pre-legislative scrutiny. The Government responded in writing to each report, on the day it published the Bill (July 20, 2009). (There was also a report, from the House of Commons justice committee, on the attorney general, but reform of the prosecution role never made it into the Bill: fourth report, 2007–08, HC 698.)

(5) *Public Administration Select Committee*

This House of Commons committee—chaired by Tony Wright MP—reported on June 4, 2008: *Constitutional Renewal: draft bill and white paper* (HC 499, 2007–08). “Any criticisms that we make”, the reported concluded, “do not detract from our certainty that, when the ... Bill is presented in Parliament, it will be a landmark piece of legislation.” (para.5.)

*(6) Joint committee on the draft Bill*

Following the publication of the draft Bill, a joint committee of eleven peers and the same number of MPs, chaired by Michael Jabez Forster MP, was appointed. It reported swiftly on the draft Bill on July 31, 2008, having taken evidence: HL 166-I/HC 551-I (the second, evidence, volume—HL 166-II/HC 551-II—following on August 12, 2008).

This was a more substantial piece of work. The joint committee considered: protests; the attorney general; courts and tribunals; treaties; the civil service; war powers; and constitutional renewal.

*(7) Joint committee on human rights*

This committee of peers and MPs, chaired by Andrew Dismore MP, reported on the Bill somewhat later: *Fourth Report of 2009–10*, HL 33/HC 249, January 18, 2010:

“...from a human rights perspective we are disappointed that the Bill does not reflect the much more ambitious scope of the Prime Minister’s original statement about constitutional reform ...which included a commitment to exploring the possibility of a new UK Bill of Rights, building on the Human Rights Act 1998, as part of a wider programme of constitutional reform” (para 1.6).

*(8) House of Lords constitution committee*

This committee, chaired by Lord Goodlad, reported on the Bill just after it reached the Lords: *11th Report, 2009–10*, HL Paper 98, March 18, 2010. It criticised the late addition of amendments in the commons:

“The House may take the view that the consequence of the Government tabling so many late amendments to the Bill is that the parliamentary consideration given in both Houses to the important aspects of constitutional reform which this Bill is likely to effect has been substantially curtailed ... In any event, we consider it to be extraordinary that it could be contemplated that matters of such fundamental constitutional importance as, for example, placing the civil service on a statutory footing should be agreed in the ‘wash-up’ and be denied the full parliamentary deliberation which they deserve ... This is no way to undertake the task of constitutional reform.” (paras 45–47.)

Michael Wills MP responded in a lengthy letter on March 23, 2010, but it missed second reading the following day: *14th Report, 2009–10*, HL Paper 108, March 29, 2010.

*(9) Other matters*

A number of issues in the governance of Britain programme was, according to the White Paper, to be taken forward separately: a youth citizenship commission; a British Bill of rights and responsibilities; a British statement of values; and House of Lords reform.

On March 23, 2009, Jack Straw published a Green Paper, *Rights and Responsibilities: developing our constitutional framework* (Cm.7577). The issue was being kicked into touch, and the date of January 21, 2010 was later announced for the closing of responses.

The MOJ, however, had a new website: dealing with people, power and politics.\*

*Legislative intent*

The Queen’s speech after the Green Paper of July 3, 2007, included the following: “Proposals will be brought forward to renew the constitutional settlement and strengthen the relationship between the Government, Parliament and the People.” (*Hansard*, HL Vol.696, col.3, November 6, 2007.)

The next Queen’s speech, following the White Paper of March 25, 2008, promised: “My Government will continue to take forward proposals on constitutional renewal, including strengthening the role of Parliament and other measures.” (*Hansard*, HL Vol.706, col.2, December 3, 2008.)

\*There is a list of consultations in annex 1 of the draft legislative programme 2009/10: *Government’s response and summary of consultation*, Cm.7739, November 2009.

That of November 18, 2009 included: “Legislation will continue to be taken forward on constitutional reform. My Government will also publish draft legislation on proposals for a reformed second chamber of Parliament with a democratic mandate.” (*Hansard*, HL Vol.715, col.3.)

#### *The Bill*

Bill 142 was published on July 20, 2009, with 56 clauses and 9 Schedules. It grew to 95 clauses and 15 Schedules, in HL Bill 40, published on March 3, 2010. The Act, which received Royal Assent on April 8, 2010, has, however, only 52 sections and 7 Schedules.

Second reading in the House of Commons was on October 20, 2009. There followed a committee of the whole house, for which there were six allotted days (under programme motions). The Bill did not pass the House of Commons until March 2, 2010 (with the General Election beckoning for May 6, 2010). Second reading did not follow in the House of Lords, until March 24, 2010, when peers generally criticised the Government’s attempt to rush the Bill through. It was committed to the whole house. However, it did not enter committee until 00.06 on April 7 (actually 8), 2010, when all remaining stages were also taken, the Lords adjourning at 02.50. The lords’ amendments were considered the following (actually, the same) day, by the House of Commons, for an hour, from 12.53. Royal Assent, through a commission of five peers, followed in the late afternoon.

The addition and removal of parts, to and from, the Bill is contained in the following table:

<i>Parts of Bill</i> 142	<i>Parts added</i>	<i>Parts removed</i>
civil service		
ratification of treaties		
	referendum on voting systems	
	referendum on parliamentary standards, etc.	
house of lords		house of lords
	tax status of MPs/peers	
public order		public order
human rights		human rights
courts and tribunals		courts and tribunals
national audit		national audit
financial reporting		
	public records & FOI	

Looked at in terms of sections, the Bill principally: adds Pt 1 (the civil service), at 19 sections; and amends the parliamentary standards legislation (Pt 3, 15 sections); the remaining 18 sections covering five remaining Parts.

The Bill was accompanied by explanatory notes, prepared initially by the MOJ, with the cabinet office, the foreign and commonwealth office, the home office and the treasury (the home office being removed from those accompanying the Act).

#### *The Sewel Convention*

This convention—named after a Scotland Office minister—provides that Westminster will not normally legislate on devolved matters, and alter devolved legislative and executive powers, without the consent of the Scottish Parliament.

On January 28, 2010, the Scottish Parliament consented to a number of provisions in the Bill, which alter the executive competence of Scottish ministers.

#### COMMENCEMENT

Section 52 includes the commencement provisions. Under subs.(3), the following came into force at Royal Assent (April 8, 2010); ss.41 and 42 (tax status of MPs and peers); and Pt 7 (miscellaneous and final provisions). Under subs.(4), the remainder of the Act may come into force by ministerial order.

#### ABBREVIATIONS

“the Act”:	Constitutional Reform and Governance Act 2010
“the Bill”:	Constitutional Reform and Governance Bill: Bill 142 (20.07.09); Bill 4 (19.11.09); Bill 68 (09.02.10); HL Bill 40 (03.03.10); Bill 106 (07.04.10)
“CPI”:	Commissioner for Parliamentary Investigations
“CRA 2005”:	Constitutional Reform Act 2005
“IPSA”:	Independent Parliamentary Standards Authority
“MOJ”:	Ministry of Justice
“the PSA”:	Parliamentary Standards Act 2009
“UK”:	United Kingdom (of GB and Northern Ireland)

## PART 1

### THE CIVIL SERVICE

#### CHAPTER I

#### STATUTORY BASIS FOR MANAGEMENT OF THE CIVIL SERVICE

#### *Application*

#### 1. Application of Chapter

- (1) Subject to subsections (2) and (3), this Chapter applies to the civil service of the State.
- (2) This Chapter does not apply to the following parts of the civil service of the State-
  - (a) the Secret Intelligence Service;
  - (b) the Security Service;
  - (c) the Government Communications Headquarters;
  - (d) the Northern Ireland Civil Service;
  - (e) the Northern Ireland Court Service.
- (3) Further, this Chapter-
  - (a) does not apply in relation to the making, outside the United Kingdom, of selections of persons who are not members of the civil service of the State for appointment to that service for the purpose only of duties to be carried out wholly outside the United Kingdom;
  - (b) does not apply in relation to the appointment of a person to the civil service of the State who was selected for the appointment as mentioned in paragraph (a);
  - (c) does not apply to the civil service of the State so far as it consists of persons-

- (i) who were appointed to the civil service of the State as mentioned in paragraph (b), and
  - (ii) all of whose duties are carried out wholly outside the United Kingdom.
- (4) In this Chapter references to the civil service-
- (a) are to the civil service of the State excluding the parts mentioned in subsections (2) and (3)(c);
  - (b) are to be read subject to subsection (3)(a) and (b);
- and references to civil servants are to be read accordingly.

#### GENERAL NOTE

Part 1 (the civil service) is the major Part of the Act. There were 19 clauses in Bill 142, and they have survived through to the Act.

The idea of legislating on the management of the civil service—hitherto part of the royal prerogative—was most recently suggested by the public administration select committee of the House of Commons, in 2003: *A Draft Civil Service Bill: completing the reform*, HC Paper 128.

The civil service was included in the draft constitutional renewal Bill (as Pt 5) of March 25, 2008, in similar terms.

Part 1 is divided into two Chapters: statutory basis for management of the civil service; and consequential and transitional provision.

The phrase “of the State” is used in this section, but it is not defined in s.18. The state is, of course, a concept of public international law. It appears rarely in the domestic law of the United Kingdom, its origin here being political theory (which partly inspires the United Kingdom’s attempts at constitutional law).

Note the consequential amendment, replacing the terms the home civil service and the diplomatic service, with the “civil service of the State”: Sch.2 para.2.

This section applies Ch.1 (ss.1–18) or rather limits the definition of “the civil service”. It first appeared in Bill 142, in the same terms.

Subsections (1)–(3) effectively define the state in domestic law, through defining its civil service. Excluded from this Chapter are the security and intelligence bodies. Also excluded is the Northern Ireland civil service, established following devolution in 1921. The Northern Ireland court service dates from 1972. Subsection (3) is more controversial: it excludes officials recruited abroad, who also work abroad.

Subsection (4) now defines the civil service of the state.

### *Civil Service Commission*

## **2. Establishment of the Civil Service Commission**

- (1) There is to be a body corporate called the Civil Service Commission (“the Commission”).
- (2) Schedule 1 (which is about the Commission) has effect.
- (3) The Commission has the role in relation to selections for appointments to the civil service set out in sections 11 to 14.
- (4) See also-
  - (a) section 9 (which sets out the Commission’s role in dealing with conduct that conflicts with civil service codes of conduct);
  - (b) section 17 (under which the Commission may be given additional functions).

#### GENERAL NOTE

There has been a civil service commission, for England and Wales, plus Scotland, since 1855 (following the Northcote-Trevelyan report of the previous year).

This section puts it on a statutory footing, making it a body corporate and therefore giving it legal personality. The section first appeared in Bill 142, in the same terms.

Subsection (1) creates the civil service commission, and subs.(2) gives effect to Sch.1.

Subsections (3) and (4) follow Sch.1, and cross refer to the allocation of function by other sections in this Part of the Act.

*Power to manage the civil service*

### 3. Management of the civil service

- (1) The Minister for the Civil Service has the power to manage the civil service (excluding the diplomatic service).
- (2) The Secretary of State has the power to manage the diplomatic service.
- (3) The powers in subsections (1) and (2) include (among other things) power to make appointments.
- (4) But they do not cover national security vetting (and, accordingly, subsections (1) and (2) do not affect any power relating to national security vetting).
- (5) The agreement of the Minister for the Civil Service is required for any exercise of the power in subsection (2) in relation to-
  - (a) remuneration of civil servants (including compensation payable on leaving the civil service), or
  - (b) the conditions on which a civil servant may retire.
- (6) In exercising his power to manage the civil service, the Minister for the Civil Service shall have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions governing the relationship between Parliament and Her Majesty's Government.

#### GENERAL NOTE

This section first appeared in Bill 142. It reappeared in amended form in Bill 106, subs.(6) having been added, during wash up, at committee in the House of Lords on April 7, 2010.

This section distinguishes the minister for the civil service and the secretary of state. Neither is defined in the Act.

However, the minister for the civil service is referred to in s.6(2) and Sch.1 paras 2 and 3 of the Ministers of the Crown Act 1975 (c.26), a consolidation measure. The post has been held, since 1964, by the prime minister (a post which is not defined in legislation), though the functions have been delegated to a cabinet office minister.

The office of secretary of state is defined in s.2(1) of the Ministers of the Crown Act 1975, though it goes on to refer to a number of secretaries of state (who may be corporations sole under this Act). Secretary of state in this section refers to the secretary of state for foreign and commonwealth affairs.

Subsections (1) and (2) divide the responsibilities between the prime minister and the foreign secretary. Subsection (5) makes the latter subordinate to the former on questions of pay and pensions.

Subsections (3) and (4) define the ministerial powers as including making appointments, but not national security vetting. National security vetting, though it is not mentioned, is the responsibility of the security service. Under s.1(2)(b), this is excluded from the definition of the civil service of the state.

Lord Norton of Louth, a conservative constitutionalist, added subs.(6) (an amendment accepted by the Government). The purpose is clear, even if it has been rarely stated. There is a perception that ministers control officials, though not regarding party matters (even if there have been incidents). This subsection strengthens officials in resisting ministers. There is a parliament, which is legislatively supreme, and there are conventions governing relations with the executive. This is in spite of the reality of an executive-dominated parliament.

Interestingly, subs.(6) does not apply to the secretary of state. This subsection would not have made it into an Act otherwise, without major revision by parliamentary counsel.

Under the Civil Service (Management Functions) Act 1992 (c.61), the powers of ministers are, and will remain, delegated, as regards individual officials, to the head of the civil service and the permanent secretaries in the departments.

The explanatory notes read:

“Whilst the Act removes the prerogative powers for the management of the Civil Service, the prerogative will be retained in relation to security vetting and the management of the parts of the Civil Service of the State ... which are not covered by the provisions in Part 1.” (para.7.)

#### 4. Other statutory management powers

- (1) All statutory management powers in effect when section 3 comes into force continue to have effect.
- (2) But those and all other statutory management powers are exercisable subject to section 3.
- (3) “Statutory management power” means a power in relation to the management of any part of the civil service conferred by an Act (whenever passed) or an instrument under an Act (whenever made).
- (4) “Act” includes-
  - (a) an Act of the Scottish Parliament;
  - (b) an Act or Measure of the National Assembly for Wales;
 but excludes this Part of this Act.
- (5) Subsection (2) does not apply to a statutory management power conferred by the Superannuation Act 1965 or the Superannuation Act 1972 or an instrument under any of those Acts.

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

Subsections (1) and (2) have the effect of transforming existing royal prerogative powers, exercised by the prime minister and the foreign secretary, into statutory powers. This is confirmed by subs.(3).

Subsection (4) effectively defines extent. Section 1(2)(d) and (e) effectively defines the state in this Act, as the United Kingdom less Northern Ireland. This subsection confirms that the devolved administrations in Scotland and Wales do not affect the civil service. It is necessary to exclude Pt 1 of this Act because that is where the new rules are being provided for.

Subsection (5) excludes the Superannuation Acts 1965 and 1967.

### *Codes of conduct*

#### 5. Civil service code

- (1) The Minister for the Civil Service must publish a code of conduct for the civil service (excluding the diplomatic service).
- (2) For this purpose, the Minister may publish separate codes of conduct covering civil servants who serve the Scottish Executive or the Welsh Assembly Government.
- (3) Before publishing a code (or any revision of a code) under subsection (2), the Minister must consult the First Minister for Scotland or the First Minister for Wales (as the case may be).
- (4) In this Chapter “civil service code” means a code of conduct published under this section as it is in force for the time being.
- (5) The Minister for the Civil Service must lay any civil service code before Parliament.

- (6) The First Minister for Scotland must lay before the Scottish Parliament any civil service code under subsection (2) that covers civil servants who serve the Scottish Executive.
- (7) The First Minister for Wales must lay before the National Assembly for Wales any civil service code under subsection (2) that covers civil servants who serve the Welsh Assembly Government.
- (8) A civil service code forms part of the terms and conditions of service of any civil servant covered by the code.

**GENERAL NOTE**

This section first appeared in Bill 142, in the same terms. It has to be read with the following two sections.

There has been a succession of civil service codes, hitherto created under royal prerogative powers. This section brings such codes under statute.

Subsection (1) is mandatory upon the prime minister. Subsection (2) permits separate codes for officials under the devolved administrations in Scotland and Wales.

Subsections (4) and (8) are, respectively, definitional and effectively contractual, though the phrase here is “terms and conditions of service” (which, under employment law, becomes employment).

Subsections (3) and (5)–(7) impose requirements on the prime minister and the first ministers in Scotland and Wales. However, the prime minister has a discretion regarding parliament, unlike the other two heads of administration.

## **6. Diplomatic service code**

- (1) The Secretary of State must publish a code of conduct for the diplomatic service.
- (2) In this Chapter “diplomatic service code” means the code of conduct published under this section as it is in force for the time being.
- (3) The Secretary of State must lay the diplomatic service code before Parliament.
- (4) The diplomatic service code forms part of the terms and conditions of service of any civil servant covered by the code.

**GENERAL NOTE**

This section first appeared in Bill 142, in the same terms. It has to be read with the previous, and the following, section.

This section is in similar terms to s.5. However, there is no reference to devolution.

## **7. Minimum requirements for civil service and diplomatic service codes**

- (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.
- (3) The administrations are-
  - (a) Her Majesty’s Government in the United Kingdom;
  - (b) the Scottish Executive;
  - (c) the Welsh Assembly Government.
- (4) The code must require civil servants to carry out their duties-
  - (a) with integrity and honesty, and

- (b) with objectivity and impartiality.
- (5) But the code need not require special advisers (see section 15) to carry out their duties with objectivity or impartiality.

#### DEFINITIONS

“special adviser”: s.15

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms. It has to be read with the previous two sections.

Subsection (1) is strangely drafted. It is a subsection with two paragraphs, even if the second is also a parenthesis. The first paragraph refers to the content of the codes, but the second means that this is only an including provision.

Subsections (2) and (3) impose a duty upon officials in the three administrations in Great Britain. It is to assist the administration, as duly constituted regardless of political complexion. No doubt, “duly constituted for the time being” will be defined to include the beginning and end of administrations.

Subsections (4) and (5) impose high standards—integrity and honesty and objectivity and impartiality—upon civil servants, but not special advisers, who do not have to be objective or impartial.

### 8. Special advisers code

- (1) The Minister for the Civil Service must publish a code of conduct for special advisers (see section 15).
- (2) For this purpose, the Minister may publish separate codes of conduct covering special advisers who serve the Scottish Executive or the Welsh Assembly Government.
- (3) Before publishing a code (or any revision of a code) under subsection (2), the Minister must consult the First Minister for Scotland or the First Minister for Wales (as the case may be).
- (4) In this Chapter “special advisers code” means a code of conduct published under this section as it is in force for the time being.
- (5) Subject to subsection (6), a special advisers code must provide that a special adviser may not-
  - (a) authorise the expenditure of public funds;
  - (b) exercise any power in relation to the management of any part of the civil service of the State;
  - (c) otherwise exercise any power conferred by or under this or any other Act or any power under Her Majesty’s prerogative.
- (6) A special advisers code may permit a special adviser to exercise any power within subsection (5)(b) in relation to another special adviser.
- (7) In subsection (5)(c) “Act” includes-
  - (a) an Act of the Scottish Parliament;
  - (b) an Act or Measure of the National Assembly for Wales;
  - (c) Northern Ireland legislation.
- (8) The Minister for the Civil Service must lay any special advisers code before Parliament.
- (9) The First Minister for Scotland must lay before the Scottish Parliament any special advisers code under subsection (2) that covers special advisers who serve the Scottish Executive.
- (10) The First Minister for Wales must lay before the National Assembly for Wales any special advisers code under subsection (2) that covers special advisers who serve the Welsh Assembly Government.

- (11) A special advisers code forms part of the terms and conditions of service of any special adviser covered by the code.

## DEFINITIONS

“special advisers”: s.15

## GENERAL NOTE

This section first appeared in Bill 142. It reappeared in HL Bill 40: subss.(2) and (5)–(7) were added.

Special advisers are defined separately in s.15. Perhaps because of s.16, the definition has not been squeezed into s.18.

Special advisers, it should be noted, are a matter for the prime minister, and not for each employing minister. There is no separate reference to the foreign secretary in this section.

Subsection (1) provides for a separate special advisers code (there being no apostrophe before or after the “s”), by analogy with civil service code and diplomatic service code.

Subsections (5)–(7)—which were added—greatly circumscribe the role of special adviser, at least as it developed in the early years of the first Tony Blair Government (1997–2001). Paragraphs (a)–(c), as read with subss.(6) and (7), are exclusions. Subsection (7) significantly adds “Northern Ireland legislation” (unlike s.4(4)).

The other subsections resemble provisions in ss.5 and 6.

**9. Conduct that conflicts with a code of conduct: complaints by civil servants**

- (1) This section applies in relation to any civil service code and the diplomatic service code; and “code” is to be read accordingly.
- (2) Subsection (3) applies if a civil servant (“P”) covered by a code has reason to believe-
  - (a) that P is being, or has been, required to act in a way that conflicts with the code, or
  - (b) that another civil servant covered by the code is acting, or has acted, in a way that conflicts with the code.
- (3) P may complain to the Commission about the matter.
- (4) A code may include provision about the steps that must be taken by a civil servant before making a complaint (and P must take the steps accordingly).
- (5) The Commission-
  - (a) must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;
  - (b) after considering a complaint, may make recommendations about how the matter should be resolved.
- (6) For the purposes of the investigation or consideration of a complaint, the following must provide the Commission with any information it reasonably requires-
  - (a) civil service management authorities;
  - (b) the complainant;
  - (c) any civil servant whose conduct is covered by the complaint.
- (7) The revision of a code does not affect the application of this section in relation to anything occurring before the revision.

## GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section does not include special advisers, who clearly lack the right to complain.

Subsections (2) and (3) provide for complaints to the civil service commission. The implication is that the complaint will be against ministers or other officials.

Subsection (4) provides for line management activity.

Subsections (5) and (6) provide for investigation, consideration and recommendations, and for the powers of the civil service commission.

Subsection (7) prevents a minister amending a code to pre-empt or curtail a complaint.

### *Appointment*

## **10. Selections for appointments to the civil service**

- (1) This section applies to the selection of persons who are not civil servants for appointment to 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) a person's selection for an appointment to the diplomatic service either as head of mission or in connection with the person's appointment (or selection for appointment) as Governor of an overseas territory;
  - (b) selection for an appointment as special adviser (see section 15);
  - (c) a selection excepted by the recruitment principles (see sections 11 and 12(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).
- (5) But, in relation to persons selected in reliance on subsection (3)(c), the recruitment principles may disapply subsection (4) in specified cases.

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms. It has to be read with the following four sections. These five sections deal with recruitment, which is called appointment to allow for selection followed by appointment.

Subsections (1) and (3) define who are non-civil servants before selection. This, of course, permits subs.(3) insiders to be classed as outsiders.

Subsection (2) contains the merit principle, and also fair and open competition—concepts that are missing from the Equality Act 2010 (c.15).

Subsection (3) excludes: heads of diplomatic missions and governors; special advisers; and those excepted under ss.11 and 12(1)(b).

Subsection (5) widens the recruitment exception: subs.(3)(c) refers to ss.11 and 12(1)(b), but the latter simply refers back to s.10(3)(c); the key is clearly s.11, where discretion is effectively hidden. But subs.(5) permits the disapplying of subs.(4).

## **11. Recruitment principles**

- (1) The Commission must publish a set of principles to be applied for the purposes of the requirement in section 10(2).
- (2) Before publishing the set of principles (or any revision of it), the Commission must consult the Minister for the Civil Service.
- (3) In this Chapter “recruitment principles” means the set of principles published under this section as it is in force for the time being.
- (4) Civil service management authorities must comply with the recruitment principles.

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms. It has to be read with the previous, and three following, sections.

This section gives discretion to the civil service commission, subject to the approval of the prime minister. It provides for recruitment principles, derived from s.10(2).

## 12. Approvals for selections and exceptions

- (1) The recruitment principles may include provision-
  - (a) requiring the Commission's approval to be obtained for a selection which is subject to the requirement in section 10(2);
  - (b) excepting a selection from that requirement for the purposes of section 10(3)(c).
- (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-
  - (a) that the provision is justified by the needs of the civil service, or
  - (b) that the provision is needed to enable the civil service to participate in a government employment initiative that major employers in the United Kingdom (or a part of the United Kingdom) have been asked to participate in.
- (5) Provision within subsection (1)(a) or (b) may be made in any way, including (for example) by reference to-
  - (a) particular appointments or descriptions of appointments;
  - (b) the circumstances in which a selection is made;
  - (c) the circumstances of the person to be selected;
  - (d) the purpose of the requirement to obtain approval or the purpose of the exception.
- (6) Provision within subsection (1)(b) may also (for example)-
  - (a) deal with the way in which selections made in reliance on section 10(3)(c) are to be made;
  - (b) specify terms and conditions that must be included in the terms and conditions of an appointment resulting from a selection made in reliance on section 10(3)(c).
- (7) Provision within subsection (1)(a) or (b) may confer discretions on the Commission or civil service management authorities.

### GENERAL NOTE

This section first appeared in Bill 142, in the same terms. It has to be read with the two previous, and two following, sections.

Subsection (1) refers to s.10(2) and (3)(c), which represents a significant departure from the merit principle and fair and open competition.

Subsections (2), (5) and (7) provide for fair recruitment. However, the alternative system is provided for in subs.(4), (5), (6) and (7).

The reason for unfairness is, in subs.(4)(a): the needs of the civil service. Subsection (4)(b) is not explained, but appears to relate to secondment from, most likely, business.

Subsection (7) confirms the objective is the conferring of discretion, whether for the fair or unfair selections.

## 13. Complaints about competitions

- (1) Subsection (2) applies if a person has reason to believe that a selection for an appointment has been made in contravention of the requirement in section 10(2).
- (2) The person may complain to the Commission about the matter.
- (3) The Commission-

- (a) may determine steps that must be taken by a person before making a complaint (and those steps must be taken accordingly);
  - (b) must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;
  - (c) after considering a complaint, may make recommendations about how the matter should be resolved.
- (4) For the purposes of the investigation or consideration of a complaint, the following must provide the Commission with any information it reasonably requires
- (a) civil service management authorities;
  - (b) the complainant.

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms. It has to be read with the three previous, and the following, sections.

This section is similar to s.9.

Subsections (1) and (2) permit a complaint only where it is a s.10(2) selection.

Subsections (3) and (4) cover line management, complaints, investigation, consideration, recommendations and the powers of the civil service commission.

### 14. Monitoring by the Commission

- (1) The Commission must carry out whatever reviews of recruitment policies and practices it thinks are necessary to establish-
  - (a) that the principle of selection on merit on the basis of fair and open competition is being upheld in accordance with the requirement in section 10(2) and the recruitment principles, and
  - (b) that the requirement in section 10(2) and the recruitment principles are not being undermined in any way (apart from non-compliance).
- (2) For this purpose, civil service management authorities must provide the Commission with any information it reasonably requires.

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms. It has to be read with the four previous sections.

This section provides for monitoring by the civil service commission. It affirms s.10(2). Obviously, the unfair system is not to be permitted to overshadow the fair system. But surely there is an argument that Parliament has permitted the unfair system?

#### *Special advisers*

### 15. Definition of “special adviser”

- (1) In this Chapter ““special adviser”” means a person (“P”) who holds a position in the civil service serving an administration mentioned below and whose appointment to that position meets the applicable requirements set out below.

#### *Her Majesty’s Government in the United Kingdom*

The requirements are-

- (a) P is appointed to assist a Minister of the Crown after being selected for the appointment by that Minister personally;

- (b) the appointment is approved by the Prime Minister;
- (c) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
- (d) those terms and conditions provide for the appointment to end not later than-
  - (i) when the person who selected P ceases to hold the ministerial office in relation to which P was appointed to assist that person, or
  - (ii) if earlier, the end of the day after the day of the poll at the first parliamentary general election following the appointment.

*Scottish Executive*

The requirements are-

- (a) P is appointed to assist the Scottish Ministers (or one or more of the ministers mentioned in section 44(1)(a) and (b) of the Scotland Act 1998) after being selected for the appointment by the First Minister for Scotland personally;
- (b) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
- (c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.

The reference above to the Scottish Ministers excludes the Lord Advocate and the Solicitor General for Scotland.

*Welsh Assembly Government*

The requirements are-

- (a) P is appointed to assist the Welsh Ministers (or one or more of the ministers mentioned in section 45(1)(a) and (b) of the Government of Wales Act 2006) after being selected for the appointment by the First Minister for Wales personally;
  - (b) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
  - (c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.
- (2) In subsection (1), in relation to an appointment for which the selection is made personally by a person designated under section 45(4) of the Scotland Act 1998 or section 46(5) of the Government of Wales Act 2006, the reference to the person who selected P ceasing to hold office as First Minister for Scotland or Wales (as the case may be) is to be read as a reference to the designated person ceasing to be able to exercise the functions of the First Minister by virtue of the designation.

## DEFINITIONS

“special adviser”: s.15

## GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section has to be read with the following one. Clearly, they could not be included in s.8 or s.18.

This section refers to three administrations, the government in London and the devolved administrations in Edinburgh and Cardiff. Strangely, they have been listed in subs.(1).

For London, prime ministerial approval is necessary.

In Scotland and Wales, the first ministers personally select the special advisers. The prime minister still exercises influence through approval of the terms and conditions.

Subsection (2) refers to persons designated by the presiding officer to act as first minister, in a number of circumstances.

## **16. Annual reports about special advisers**

- (1) The Minister for the Civil Service must-
  - (a) prepare an annual report about special advisers serving Her Majesty's Government in the United Kingdom, and
  - (b) lay the report before Parliament.
- (2) The First Minister for Scotland must-
  - (a) prepare an annual report about special advisers serving the Scottish Executive, and
  - (b) lay the report before the Scottish Parliament.
- (3) The First Minister for Wales must-
  - (a) prepare an annual report about special advisers serving the Welsh Assembly Government, and
  - (b) lay the report before the National Assembly for Wales.
- (4) A report under this section must contain information about the number and cost of the special advisers.

### DEFINITIONS

“special adviser”: s.16

### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

It provides for annual reports regarding the special advisers serving the three administrations.

### *Additional functions of the Commission*

## **17. Agreements for the Commission to carry out additional functions**

- (1) The Minister for the Civil Service and the Commission may agree that the Commission is to carry out functions in relation to the civil service in addition to those given to it under the other provisions of this Chapter.
- (2) The Commission is to carry out those additional functions accordingly.
- (3) For the purposes of any additional function, civil service management authorities must provide the Commission with any information it reasonably requires.

### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section permits the civil service commission, with the agreement of the prime minister, to carry out additional functions.

*Final provisions*

**18. Definitions etc**

- (1) In this Chapter-
  - “civil servant” is read as stated in section 1(4);
  - “civil service” is read as stated in section 1(4);
  - “civil service code” is defined in section 5(4);
  - “civil service management authority” means any person involved in the management of any part of the civil service;
  - “the Commission” is defined in section 2(1);
  - “diplomatic service” means Her Majesty’s diplomatic service;
  - “diplomatic service code” is defined in section 6(2);
  - “function” includes power or duty;
  - “information” means information recorded in any form;
  - “recruitment principles” is defined in section 11(3);
  - “special adviser” is defined in section 15;
  - “special advisers code” is defined in section 8(4).
- (2) Subsection (3) applies for the purposes of sections 9(6), 13(4), 14(2) and 17(3).
- (3) No person may be required to provide information which the person could not be compelled to provide in civil proceedings before the High Court or the Court of Session.

GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section is definitional. Subsection (1) refers to terms defined in above sections, the exceptions being: civil service management authority; the diplomatic service; function; and information.

Subsections (2) and (3) provide a test for the provision of information: that which is compellable in a senior court.

CHAPTER 2

CONSEQUENTIAL AND TRANSITIONAL PROVISION

**19. Consequential amendments and transitional provision**

Schedule 2 (which contains amendments consequential on this Part and transitional provision) has effect.

GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

It gives effect to Sch.2.

PART 2

RATIFICATION OF TREATIES

**20. Treaties to be laid before Parliament before ratification**

- (1) Subject to what follows, a treaty is not to be ratified unless-
  - (a) a Minister of the Crown has laid before Parliament a copy of the treaty,

- (b) the treaty has been published in a way that a Minister of the Crown thinks appropriate, and
- (c) period A has expired without either House having resolved, within period A, that the treaty should not be ratified.
- (2) Period A is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (1)(a) is met.
- (3) Subsections (4) to (6) apply if the House of Commons resolved as mentioned in subsection (1)(c) (whether or not the House of Lords also did so).
- (4) The treaty may be ratified if-
  - (a) a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why, and
  - (b) period B has expired without the House of Commons having resolved, within period B, that the treaty should not be ratified.
- (5) Period B is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (4)(a) is met.
- (6) A statement may be laid under subsection (4)(a) in relation to the treaty on more than one occasion.
- (7) Subsection (8) applies if-
  - (a) the House of Lords resolved as mentioned in subsection (1)(c), but
  - (b) the House of Commons did not.
- (8) The treaty may be ratified if a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.
- (9) “Sitting day” means a day on which both Houses of Parliament sit.

#### DEFINITIONS

“treaty”: s.25

“ratification”: s.25

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section is the first in Pt 2: ratification of treaties. There are six sections.

This part appeared in the draft constitutional renewal Bill (as Pt 4) of March 25, 2008, in similar terms.

Treaties are international agreements, made generally by states. They are binding in international law and governed by the 1969 Vienna Convention on the Law of Treaties.

The United Kingdom becomes a party to a treaty, by generally signing and then ratifying, as provided for in the treaty. This is invariably an act of the executive, acting on behalf of the state. The United Kingdom has a dualist system of law, meaning that international agreements remain out there in international law, unless expressly incorporated into domestic law by parliament.

Parliament historically had no role in the agreeing of treaties. In 1924, Arthur Ponsonby MP, the junior foreign office minister in Ramsay MacDonald’s first labour government, enunciated a rule which would be named after him: the foreign office would lay treaties before parliament for 21 sitting days, not to be accepted or rejected, but to be commented upon, if so desired. The Ponsonby rule has been followed, off and on, since then, to no particular great effect.

This section, and the following five, put the Ponsonby rule on a statutory basis.

Subsection (1) provides for three conditions precedent to ratification. Paragraph (c) gives both houses of parliament the power to vote against ratification. Subsections (2) and (9) define the 21 sitting days.

Subsections (3)–(6) provide for the eventuality of an adverse house of commons vote. The government may ratify, if a minister has stated that opinion, on one or more occasions, and another 21 sitting days has passed without the House of Commons again voting against ratification.

Subsections (7) and (8) provide for an adverse House of Lords vote. Here, the ministerial statement is all that is required. There is no need for another 21 sitting days, and no adverse second vote.

## **21. Extension of 21 sitting day period**

- (1) A Minister of the Crown may, in relation to a treaty, extend the period mentioned in section 20(1)(c) by 21 sitting days or less.
- (2) The Minister does that by laying before Parliament a statement-
  - (a) indicating that the period is to be extended, and
  - (b) setting out the length of the extension.
- (3) The statement must be laid before the period would have expired without the extension.
- (4) The Minister must publish the statement in a way the Minister thinks appropriate.
- (5) The period may be extended more than once.

### DEFINITIONS

“ratification”: s.25

“treaty”: s.25

### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section permits a minister to extend the first 21 sitting days period, by up to 21 sitting days. The exercise may be repeated.

The House of Commons may delay ratification; it cannot veto it.

## **22. Section 20 not to apply in exceptional cases**

- (1) Section 20 does not apply to a treaty if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that section having been met.
- (2) But a treaty may not be ratified by virtue of subsection (1) after either House has resolved, as mentioned in section 20(1)(c), that the treaty should not be ratified.
- (3) If a Minister determines that a treaty is to be ratified by virtue of subsection (1) the Minister must, either before or as soon as practicable after the treaty is ratified-
  - (a) lay before Parliament a copy of the treaty,
  - (b) arrange for the treaty to be published in a way that the Minister thinks appropriate, and
  - (c) lay before Parliament a statement indicating that the Minister is of the opinion mentioned in subsection (1) and explaining why.

### DEFINITIONS

“ratification”: s.25

“treaty”: s.25

### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section provides for exceptions to s.20. Subsection (1) makes it a matter of ministerial opinion. And subs.(3) provides for the procedure. This permits ratification before laying before parliament.

Subsection (2) limits the exercise of this power. It may only be done, before either house votes against ratification. But surely that is an incentive to a minister to go down this s.22 exception route, rather than seek to try and persuade after an adverse House of Commons vote, under s.20?

### 23. 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 (treaty providing for increase in European Parliament's powers not to be ratified unless approved by Act of Parliament);
  - (b) a treaty covered by section 5 of the European Union (Amendment) Act 2008 (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-
  - (a) section 158 of the Inheritance Tax Act 1984 (double taxation conventions);
  - (b) section 2 of the Taxation (International and Other Provisions) Act 2010 (double taxation arrangements);
  - (c) section 173 of the Finance Act 2006 (international tax enforcement arrangements).
- (3) Section 20 does not apply to a treaty concluded (under authority given by the government of the United Kingdom) by the government of a British overseas territory, of any of the Channel Islands or of the Isle of Man.
- (4) Section 20 does not apply to a treaty a copy of which is presented to Parliament by command of Her Majesty before that section comes into force.

#### DEFINITIONS

“ratification”: s.25

“treaty”: s.25

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section excepts treaties in four categories. The first category is EU law. Subsection (1) preserves two existing routes, whereby the UK parliament has to approve any increase in the powers of the European parliament and also any treaty amending the founding treaties. Subsection (2) preserves tax provisions, involving international agreements, given domestic effect by orders in council. Subsection (3) excludes where a treaty-making power has been delegated to an overseas territory. Subsection (4) is a transitional provision.

### 24. Explanatory memoranda

In laying a treaty before Parliament under this Part, a Minister shall accompany the treaty with an explanatory memorandum explaining the provisions of the treaty, the reasons for Her Majesty's Government seeking ratification of the treaty, and such other matters as the Minister considers appropriate.

#### DEFINITIONS

“ratification”: s.25

“treaty”: s.25

#### GENERAL NOTE

This section first appeared in lords' amendments (Bill 106). Lord Norton of Louth added it during committee on April 7, 2010.

Since 1997, government has lain an explanatory memorandum alongside treaties laid before parliament.

Explanatory memoranda are included in s.20(1)(b). They are not equivalent to: the statements in s.20(4)(a) and (8); the statements in s.21(2) and (4); and the statements in s.22(3)(c).

## 25. Meaning of “treaty” and “ratification”

- (1) In this Part “treaty” means a written agreement-
  - (a) between States or between States and international organisations, and
  - (b) binding under international law.
- (2) But “treaty” does not include a regulation, rule, measure, decision or similar instrument made under a treaty (other than one that amends or replaces the treaty (in whole or in part)).
- (3) In this Part a reference to ratification of a treaty is a reference to an act of a kind specified in subsection (4) which establishes as a matter of international law the United Kingdom’s consent to be bound by the treaty.
- (4) The acts are-
  - (a) deposit or delivery of an instrument of ratification, accession, approval or acceptance;
  - (b) deposit or delivery of a notification of completion of domestic procedures.

### DEFINITIONS

“ratification”: s.25

“treaty”: s.25

### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

Subsections (1) and (2) define “treaty”. Subsections (3) and (4) define “ratification”.

## PART 3

### PARLIAMENTARY STANDARDS ETC

#### *Amendments of the Parliamentary Standards Act 2009*

## 26. Compliance Officer

- (1) For section 3(3) and (4) of the Parliamentary Standards Act 2009 (Commissioner for Parliamentary Investigations) substitute-
  - “(3) There is to be an officer known as the Compliance Officer for the Independent Parliamentary Standards Authority (“the Compliance Officer”).
  - (4) Schedule 2 (which makes provision about the Compliance Officer) has effect.”
- (2) For Schedule 2 to that Act substitute the Schedule set out in Schedule 3.

### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

This was as a result of a report, from the committee on standards in public life (chaired by Sir Christopher Kelly), published on November 4, 2009. On December 10, 2009, the Government announced that it would implement 10 of the 60 recommendations by amending the Bill.

This is the first section of Pt 3: parliamentary standards, etc. It comprises 15 sections. This Part amends legislation rushed through Parliament in July 2009.

The scandal of MPs' (and peers) expenses, which commenced with the *Telegraph* revelations in May 2009, led to the Parliamentary Standards Act 2009 (c.13) ("the PSA"). It received Royal Assent on July 21, 2009. The PSA 2009 provided for: an independent parliamentary standards authority ("IPSA"); a commissioner for parliamentary investigations ("CPI"); and a speaker's committee for the IPSA.

Prof Sir Ian Kennedy, a legal academic, was appointed chair of IPSA in December 2009. On March 29, 2010, he presented a new expenses scheme to the House of Commons. The post of CPI was never filled.

The origin of this process lies in the (continuing) committee on standards in public life (which, on April 23, 2009, launched a review of MPs' expenses: it reported on November 4, 2009).

In 1995, the House of Commons created the office of the parliamentary commissioner for standards. The current occupant, since January 1, 2008, is Sir John Lyon CB. This body is unaffected by the PSA 2009. However, it appears that the Government thought originally that Sir John would become the CPI.

This section effectively abolishes the CPI (who was separate from the IPSA): PSA 2009 s.3(3)–(4). In his place is: a compliance officer; who is also separate. As Jack Straw told the committee on February 1, 2010:

"The debate was about whether the investigator would be part of IPSA, whether his role would be separate from it but alongside it—detached from Parliament—or whether he would be within the House." (*Hansard*, Vol.505, col.149.)

Subsection (2) replaces Sch.2 of the PSA 2009 with the one contained in Sch.3. This new Schedule (see below) develops the relationship of the compliance officer to the IPSA.

## 27. Membership of Speaker's Committee

- (1) Schedule 3 to the Parliamentary Standards Act 2009 (Speaker's Committee for the Independent Parliamentary Standards Authority) is amended as follows.
- (2) In paragraph 1-
  - (a) omit "and" at the end of sub-paragraph (c), and
  - (b) after sub-paragraph (d) insert ", and
  - (e) three lay persons appointed by resolution of the House of Commons."
- (3) For the heading of paragraph 2 substitute "Appointed members".
- (4) After paragraph 2 insert-

### *Lay members*

- "2A (1) In paragraph 1(e) "lay person" means a person who is not, and has never been, a member of either House of Parliament.
- (2) A motion for a resolution under paragraph 1(e) may be made only with the agreement of the Speaker of the House of Commons.
- (3) The person the subject of the motion must have been selected by the Speaker on merit on the basis of fair and open competition.
- (4) An appointment under paragraph 1(e) is to be for a fixed term not exceeding five years.
- (5) A person who has been appointed under paragraph 1(e) may not be appointed under paragraph 1(e) again.
- (6) A person appointed under paragraph 1(e) ceases to be a member of the Committee if the person becomes a member of either House of Parliament.

- (7) A person appointed under paragraph 1(e) may resign from the Committee by giving notice to the Committee.
- (8) The Speaker of the House of Commons may require the IPSA to pay to members of the Committee appointed under paragraph 1(e) such remuneration and allowances as the Speaker may determine.
- (9) The IPSA must make the payment accordingly.”

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 3(5) of the PSA 2009 provided for a speaker’s committee for the IPSA, and s.3(6) gave effect to Sch.3: speaker’s committee. Paragraph 1 of that Schedule provided that the committee should comprise: the speaker; the leader of the House of Commons; the chair of the committee on standards and privileges; and five MPs, who were not ministers.

This section amends Sch.3 of the PSA 2009. It adds three lay members to the speaker’s committee.

## 28. Transparency etc

- (1) The Parliamentary Standards Act 2009 is amended as follows.
- (2) After section 3 insert-

### “3A General duties of the IPSA

- (1) In carrying out its functions the IPSA must have regard to the principle that it should act in a way which is efficient, cost-effective and transparent.
- (2) In carrying out its functions the IPSA must have regard to the principle that members of the House of Commons should be supported in efficiently, cost-effectively and transparently carrying out their Parliamentary functions.”
- (3) In section 5 (MPs’ allowances scheme) after subsection (5) insert-
  - “(5A) When the scheme (or revision) is laid, the IPSA must publish in a way it considers appropriate-
    - (a) the scheme (or revision), and
    - (b) a statement of its reasons for adopting that scheme (or making that revision).”
- (4) In section 6 (dealing with claims under the MPs’ allowances scheme) after subsection (7) insert-
  - “(8) The IPSA must publish such information as it considers appropriate in respect of-
    - (a) each claim made under or by virtue of this section, and
    - (b) each payment of an allowance by the IPSA under or by virtue of this section.
  - (9) The IPSA must publish the information at times it considers appropriate and in a way it considers appropriate.
  - (10) The IPSA must determine procedures to be followed by the IPSA in relation to publication of the information, and in doing so must consult-
    - (a) the Speaker of the House of Commons,
    - (b) the Leader of the House of Commons,
    - (c) the House of Commons Committee on Standards and Privileges,
    - (d) the Compliance Officer, and
    - (e) any other person the IPSA considers appropriate.”

**GENERAL NOTE**

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

This section deals with a topic missing from the PSA 2009: transparency, etc. It adds new ss.3A, 5(5A), and 6(8)–(10) to that Act.

New s.3A embodies the increasingly familiar principles of: efficiency; cost-effectiveness; and transparency.

New s.5(5A) provides for the publication of the MPs' allowance scheme, as was done on March 29, 2010.

New s.6(8)–(10) cover each claim and each payment of an allowance. New s.6(10) does not refer to the speaker's committee, separately listing these persons.

**29. MPs' salaries**

- (1) For section 4 of the Parliamentary Standards Act 2009 (MPs' salaries) substitute-

**“4 MPs' salaries**

- (1) Members of the House of Commons are to receive a salary for the relevant period.
- (2) The salaries are to be paid by the IPSA.
- (3) Salaries are to be paid on a monthly basis in arrears.
- (4) The amounts of the salaries are to be determined by the IPSA (see section 4A).
- (5) “Relevant period”, in relation to a person who is a member of the House of Commons, means the period beginning with the day after the day of the poll for the parliamentary election at which the member was elected and ending with-
  - (a) if the person is a member immediately before Parliament is dissolved, the day of the poll for the parliamentary general election which follows the dissolution;
  - (b) otherwise, the day on which the person ceases to be a member.
- (6) No payment of salary is to be made to a member before the member has made and subscribed the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation).
- (7) The duty of the IPSA to pay a salary to a member is subject to anything done in relation to the member in the exercise of the disciplinary powers of the House of Commons.

**4A Determination of MPs' salaries**

- (1) This section is about determinations under section 4(4).
- (2) A determination may provide for higher salaries to be payable to members while holding an office or position specified for the purposes of this subsection in a resolution of the House of Commons.
- (3) A determination by virtue of subsection (2) may make different provision for different offices or positions or different classes of member (and may include exceptions).
- (4) A determination may include a formula or other mechanism for adjusting salaries from time to time.
- (5) A determination (other than the first determination) may have retrospective effect.
- (6) The IPSA must review the current determination (and make a new determination as appropriate)-

- (a) in the first year of each Parliament;
- (b) at any other time it considers appropriate.
- (7) In reviewing a determination (and before making the first determination) the IPSA must consult-
  - (a) the Review Body on Senior Salaries,
  - (b) persons appearing to the IPSA to represent persons likely to be affected by the determination or the review,
  - (c) the Minister for the Civil Service,
  - (d) the Treasury, and
  - (e) any other person the IPSA considers appropriate.
- (8) After making a determination, the IPSA must publish in a way it considers appropriate-
  - (a) the determination, and
  - (b) a statement of how it arrived at the determination.
- (9) If the IPSA reviews the current determination but decides not to make a new determination, it must publish in a way it considers appropriate a statement of how it arrived at that decision.
- (10) The IPSA may delegate to the Review Body on Senior Salaries its function of reviewing a determination (but not its function of deciding whether or not to make a new determination).”
- (2) The first determination under section 4(4) of the Parliamentary Standards Act 2009 does not have to come into effect before 1 April 2012; and section 4A(6)(a) of that Act does not apply in relation to a Parliament that begins before that date.
- (3) Until the first determination under section 4(4) of that Act comes into effect, the amounts of the salaries payable by the Independent Parliamentary Standards Authority under section 4 of that Act are to be determined in accordance with the relevant resolutions of the House of Commons.

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 4 of the PSA 2009 is:

“(1) The IPSA is to pay the salaries of members of the House of Commons in accordance with the relevant resolutions of the House. (2) That is subject to anything done in exercise of the disciplinary powers of the House.”

Obviously, s.4 was altogether too curt. Subsection (1) substitutes a new s.4 and adds a new s.4A. The two original subsections are now expanded to seven subsections. New s.4A, introduced by s.4(4), is ten subsections long.

Subsections (2) and (3) delay the new proposals until April 1, 2012; the status quo prevails until then.

### 30. MPs’ allowances scheme

In section 5 of the Parliamentary Standards Act 2009 (MPs’ allowances scheme) after subsection (8) insert-

“(8A) Any duty of the IPSA to pay an allowance to a member is subject to anything done in relation to the member in the exercise of the disciplinary powers of the House of Commons.”

## GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 5 of the PSA 2009 is: MPs' allowances scheme. This section adds a new subs.(8A). It corresponds with s.4(7) of that Act.

**31. Allowances claims**

- (1) Section 6 of the Parliamentary Standards Act 2009 (dealing with claims under the MPs' allowances scheme) is amended as follows.
- (2) Omit subsections (4) and (5).
- (3) In subsection (6) for paragraph (b) substitute-
  - “(b) provision for deducting amounts within subsection (6A) from allowances payable under the scheme or salaries payable under section 4;
  - (c) provision about how such deductions, and deductions under paragraph 5 or 12 of Schedule 4, are to be made.”
- (4) After subsection (6) insert-
  - “(6A) This subsection applies to amounts which a member (under section 9(8) or otherwise) has agreed to repay, in respect of amounts paid to the member under the MPs' allowances scheme that should not have been allowed.”
- (5) After section 6 of that Act insert-

**“6A Review of IPSA's determination**

- (1) This section applies if-
  - (a) the IPSA determines under section 6(3) that a claim is to be refused or that only part of the amount claimed is to be allowed, and
  - (b) the member (after asking the IPSA to reconsider the determination and giving it a reasonable opportunity to do so) asks the Compliance Officer to review the determination (or any altered determination resulting from the IPSA's reconsideration).
- (2) The Compliance Officer must-
  - (a) consider whether the determination (or the altered determination) is the determination that should have been made, and
  - (b) in light of that consideration, decide whether or not to confirm or alter it.
- (3) The Compliance Officer must give the IPSA a statement of any decision under subsection (2)(b), and may include a statement of the Compliance Officer's findings about the way in which the IPSA has dealt with the claim.
- (4) The IPSA must make any payments or adjustments necessary to give effect to the Compliance Officer's decision; but it must not do so until-
  - (a) it is no longer possible for there to be a relevant appeal, and
  - (b) all relevant appeals have been withdrawn or determined.
- (5) A relevant appeal is-
  - (a) an appeal under subsection (6) brought before the end of the period mentioned in subsection (7), or
  - (b) a further appeal in relation to the Compliance Officer's decision which-

- (i) is brought before the end of the usual period for bringing such an appeal, and
  - (ii) is an appeal against the determination of an appeal which was itself a relevant appeal.
- (6) The member may appeal to the First-tier Tribunal against a decision of the Compliance Officer under subsection (2)(b).
  - (7) The appeal must be brought before the end of the period of 28 days beginning with the day on which notice of the decision is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).
  - (8) The appeal is by way of a rehearing.
  - (9) On an appeal under subsection (6) the Tribunal may-
    - (a) allow the appeal in whole or in part, or
    - (b) dismiss the appeal.
  - (10) If the Tribunal allows the appeal (in whole or in part) it may-
    - (a) order the IPSA to make any payments or adjustments necessary to give effect to that decision;
    - (b) make any other order it thinks fit.
  - (11) If the Tribunal dismisses the appeal it may make any other order it thinks fit.
  - (12) The Compliance Officer must notify the IPSA of the Tribunal's decision (and the result of any further appeal)."
- (6) In section 7 of that Act (information and guidance about taxation)-
- (a) before subsection (1) insert-
    - “(A1) The IPSA must-
      - (a) prepare guidance for members of the House of Commons about making claims under the MPs' allowances scheme;
      - (b) review the guidance regularly and revise it as appropriate;
      - (c) publish the guidance in a way the IPSA considers appropriate;
      - (d) provide to any member on request such further advice about making claims as the IPSA considers appropriate.”, and
    - (b) in the heading omit “about taxation”.

**GENERAL NOTE**

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 6 of the PSA 2009 is: dealing with claims under the scheme.

This section: amends s.6; adds a new s.6A; and adds to s.7.

The amendments to s.6 deal with overpayments.

New s.6A provides extensively for reviews of IPSA determinations, to be carried out by the new compliance officer. It also provides for appeals to the first-tier tribunal.

The new subsection in s.7 (A1) deals with guidance on the MPs' allowances scheme.

**32. MPs' code of conduct relating to financial interests**

Omit section 8 of the Parliamentary Standards Act 2009 (MPs' code of conduct relating to financial interests) and the italic heading before it.

**GENERAL NOTE**

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 8 of the PSA 2009 is: MPs' code of conduct relating to financial interests. This section repeals, or rather omits, that section.

### 33. Investigations

For section 9 of the Parliamentary Standards Act 2009 (investigations) substitute-

#### “9 Investigations

- (1) The Compliance Officer may conduct an investigation if the Compliance Officer has reason to believe that a member of the House of Commons may have been paid an amount under the MPs' allowances scheme that should not have been allowed.
- (2) An investigation may be conducted-
  - (a) on the Compliance Officer's own initiative,
  - (b) at the request of the IPSA,
  - (c) at the request of the member, or
  - (d) in response to a complaint by an individual.
- (3) For the purposes of the investigation the member and the IPSA-
  - (a) must provide the Compliance Officer with any information (including documents) the Compliance Officer reasonably requires, and
  - (b) must do so within such period as the Compliance Officer reasonably requires.
- (4) The Compliance Officer must, after giving the member and the IPSA an opportunity to make representations to the Compliance Officer, prepare a statement of the Compliance Officer's provisional findings.
- (5) The Compliance Officer must, after giving the member and the IPSA an opportunity to make representations to the Compliance Officer about the provisional findings, prepare a statement of the Compliance Officer's findings (subject to subsection (7)).
- (6) Provisional findings under subsection (4) and findings under subsection (5) may include-
  - (a) a finding that the member failed to comply with subsection (3),
  - (b) findings about the role of the IPSA in the matters under investigation, including findings that the member's being paid an amount under the MPs' allowances scheme that should not have been allowed was wholly or partly the IPSA's fault.
- (7) If subsection (8) applies, the Compliance Officer need not make a finding under subsection (5) as to whether the member was paid an amount under the MPs' allowances scheme that should not have been allowed.
- (8) This subsection applies if-
  - (a) the member accepts a provisional finding that the member was paid an amount under the MPs' allowances scheme that should not have been allowed,
  - (b) such other conditions as may be specified by the IPSA are, in the Compliance Officer's view, met in relation to the case, and
  - (c) the member agrees to repay to the IPSA, in such manner and within such period as the Compliance Officer considers reasonable, such amount as the Compliance Officer considers reasonable (and makes the repayment accordingly).

- (9) Before specifying conditions under subsection (8)(b) the IPSA must consult the persons listed in section 9A(6).
- (10) References in this section (and section 9A) to a member of the House of Commons include a former member of that House.

#### **9A Procedures etc**

- (1) The IPSA must determine procedures to be followed by the Compliance Officer in relation to investigations under section 9.
- (2) The procedures must in particular include provision about-
  - (a) complaints under section 9(2)(d),
  - (b) representations under section 9(4),
  - (c) representations under section 9(5), and
  - (d) the circumstances in which the Compliance Officer must publish the documents listed in subsection (4).
- (3) Provision under subsection (2)(b) must include provision giving the member who is the subject of the investigation-
  - (a) an opportunity to be heard in person, and
  - (b) an opportunity, where the Compliance Officer considers it appropriate, to call and examine witnesses.
- (4) The documents referred to in subsection (2)(d) are-
  - (a) statements of provisional findings under section 9(4),
  - (b) statements of findings under section 9(5), and
  - (c) agreements under section 9(8).
- (5) The IPSA must also determine procedures to be followed by the Compliance Officer as to the circumstances in which the Compliance Officer must publish-
  - (a) statements under section 6A(3), and
  - (b) penalty notices under paragraph 6 of Schedule 4.
- (6) Procedures under this section must be fair, and before determining procedures the IPSA must consult-
  - (a) the Speaker of the House of Commons,
  - (b) the Leader of the House of Commons,
  - (c) the House of Commons Committee on Standards and Privileges,
  - (d) the Compliance Officer, and
  - (e) any other person the IPSA considers appropriate.”

#### **GENERAL NOTE**

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 9 of the PSA 2009 is: investigations. The replacement of the CPI by the compliance officer requires these amendments.

This section: substitutes a new s.9 in that Act; and adds a new s.9A.

The new s.9 provides for investigations, not only of members, but effectively of the IPSA.

The new s.9A assigns to the IPSA the duty to determine procedures, to be followed by the compliance officer.

#### **34. Enforcement**

- (1) After section 9A of the Parliamentary Standards Act 2009 insert-

##### **“9B Enforcement**

- (1) Schedule 4 (which makes provision about the enforcement powers of the Compliance Officer) has effect.

- (2) The Compliance Officer may provide to the Parliamentary Commissioner for Standards any information connected with an investigation under section 9 or action taken under Schedule 4 which the Compliance Officer considers may be relevant to the work of the Parliamentary Commissioner for Standards.”
- (2) After Schedule 3 to that Act insert the Schedule set out in Schedule 4.

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 9A of the PSA 2009 is inserted by s.33 above.

This section inserts a new s.9B in the same Act: enforcement.

Subsection (1) inserts s.9B in that Act, and subs.(2) inserts a new Sch.4 in that Act.

The new s.9B gives effect to the new Sch.4: enforcement powers. It also contains the first reference to the parliamentary commissioner for standards, who is mentioned in the introduction to s.26 above.

### 35. Relationships with other bodies etc

After section 10 of the Parliamentary Standards Act 2009 insert-

#### “10A Relationships with other bodies etc

- (1) The IPSA and the Compliance Officer must prepare a joint statement setting out how the IPSA and the Compliance Officer will work with the following-
- (a) the Parliamentary Commissioner for Standards,
  - (b) the Director of Public Prosecutions,
  - (c) the Commissioner of Police of the Metropolis, and
  - (d) any other person the IPSA and the Compliance Officer consider appropriate.
- (2) Before preparing the statement the IPSA and the Compliance Officer must consult the persons listed in subsection (1).
- (3) Nothing in sections 9 to 9B (or Schedule 4) affects the disciplinary powers of the House of Commons.
- (4) The powers conferred by sections 9 to 9B (and Schedule 4) may be exercised in relation to the conduct of a member of the House of Commons even if-
- (a) the member is or has been the subject of criminal proceedings in relation to that conduct (whether or not convicted of an offence);
  - (b) the House of Commons is exercising or has exercised any of its disciplinary powers in relation to that conduct.
- (5) References in subsection (4) to a member of the House of Commons include a former member of that House.”

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 10 of the PSA 2009 is: offence of providing false or misleading information for allowances claims.

This section adds to new s.10A to that Act.

The new s.10A clarifies the relationship between the IPSA and the compliance officer. They are to work together. Their working relationship with the persons in new subs.(1) is to be committed to a joint statement. New subs.(3) refers to ss.9, 9A and 9B of the Act, dealing with investigations, procedures, enforcement and the powers of the compliance officer, and makes

clear that this does not intrude upon the house of commons disciplinary powers (which remain a matter for the committee on standards and privileges). New subs.(4) provides that the compliance officer may act, regardless of whether there are criminal proceedings and/or disciplinary proceedings.

### **36. Further functions of the IPSA and Commissioner**

Omit section 11 of the Parliamentary Standards Act 2009 (further functions of the IPSA and Commissioner).

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 11 of the PSA 2009 is: further functions of the IPSA and commissioner. This Act abolishes the CPI. It follows that s.11 is repealed, or omitted, by this section.

### **37. Expiry of provisions of the Parliamentary Standards Act 2009**

Omit section 15 of the Parliamentary Standards Act 2009 (expiry of provisions of the Act).

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Section 15 of the PSA 2009 is: expiry of provisions of the Act. This related to the CPI, who was given two years from the coming into force of s.8 (MPs' code of conduct relating to financial interests).

This section repeals, or omits, s.15 of the Act.

### **38. Consequential amendments**

Schedule 5 (which makes consequential amendments relating to sections 26 to 37) has effect.

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

This section gives effect to Sch.5.

#### *Other provision*

### **39. Resettlement grants for MEPs**

- (1) The European Parliament (Pay and Pensions) Act 1979 is amended as follows.
- (2) In section 3 (resettlement grants for persons ceasing to be MEPs) for subsections (1) to (3) substitute-
  - “(1) The IPSA may make a scheme providing for allowances to be payable to persons to whom this section applies, in connection with their ceasing to be Representatives.
  - (2) It may do so only if a scheme under section 5 of the Parliamentary Standards Act 2009 (MPs' allowances scheme) makes provision for allowances to be payable in connection with persons ceasing to be Members on a dissolution of Parliament.

- (3) A scheme under this section must make provision which is as nearly equivalent to the provision made by the scheme under section 5 of that Act as the IPSA considers practicable.
- (3A) The IPSA must send to the Speaker of the House of Commons for laying before both Houses of Parliament-
  - (a) any scheme made by it under this section, and
  - (b) a statement of the reasons for making the scheme.
- (3B) When the scheme and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.
- (3C) This section applies to a person who is a Representative immediately before the end of a five-year period, and either-
  - (a) does not stand for election to the European Parliament at the general election of representatives to the European Parliament held in that period, or
  - (b) does so stand at that election (whether for the same or a different electoral region) and is not elected.
- (3D) A scheme made by the IPSA under this section may amend or revoke any previous scheme made by the IPSA under this section.”
- (3) Omit section 3A (power to amend section 3).
- (4) In section 7(1)(b) (expenses and receipts) for “grant” substitute “allowance”.

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

Sections 26–38 above all deal with the PSA 2009. This section and the following section have been added to Pt 3.

This section amends the European Parliament (Pay and Pensions) Act 1979 (c.50), as a result of the establishment of the IPSA. Section 3 of that Act is: resettlement grants for persons ceasing to be MEPs. This section substitutes s.3(1)–(3) of that Act. This section applies to MEPs who have opted out of the single statute that came into effect on July 14, 2009. Subsection (3) omits s.3A of that Act. And subs.(4) amends a term.

## 40. Parliamentary and other pensions

Schedule 6 (which makes provision about pensions for members of the House of Commons, ministers and other office holders) has effect.

#### GENERAL NOTE

This section first appeared in Bill 68 (in the same terms), having been added at committee in the House of Commons on February 1, 2010.

This section gives effect to Sch.6.

## PART 4

### TAX STATUS OF MPS AND MEMBERS OF THE HOUSE OF LORDS

#### 41. Tax status of MPs and members of the House of Lords

- (1) Subsection (2) applies if a person is for any part of a tax year-
  - (a) a member of the House of Commons, or
  - (b) a member of the House of Lords.

- (2) The person is to be treated for the purposes of the taxes listed in subsection (3) as resident, ordinarily resident and domiciled in the United Kingdom for the whole of that tax year.
- (3) The taxes are-
  - (a) income tax,
  - (b) capital gains tax, and
  - (c) inheritance tax.
- (4) For the purposes of this section a person-
  - (a) becomes a member of the House of Commons when (having been elected to that House) the person makes and subscribes the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation), and
  - (b) ceases to be a member of that House when-
    - (i) the Parliament to which the person was elected is dissolved, or
    - (ii) the person's seat is otherwise vacated.
- (5) For the purposes of this section and section 42 a person is a member of the House of Lords if the person is entitled to receive writs of summons to attend that House.
- (6) In relation to a member of the House of Lords, in subsection (1) the reference to any part of a tax year excludes any part of the year during which-
  - (a) section 137(3) of the Constitutional Reform Act 2005 applies to the member, or
  - (b) the member is entitled to receive writs of summons to attend the House of Lords by virtue of being an archbishop or bishop.
- (7) This section applies in relation to the tax year 2010-11 and subsequent tax years.
- (8) But in applying this section to the tax year 2010-11-
  - (a) if the Parliament in which this Act is passed is dissolved in that tax year, ignore a person's membership of the House of Commons in that Parliament, and
  - (b) in any event, ignore a person's membership of the House of Lords at any time before the end of the period of 3 months beginning with the day on which section 42 comes into force.
- (9) In this section, in relation to inheritance tax-
  - (a) "tax year" means a year beginning on 6 April and ending on the following 5 April, and
  - (b) "the tax year 2010-11" means the tax year beginning on 6 April 2010.
- (10) In determining for the purposes of this section and section 42 whether a person is entitled to receive writs of summons to attend the House of Lords, ignore-
  - (a) section 2 of the Forfeiture Act 1870;
  - (b) sections 426A and 427 of the Insolvency Act 1986.

#### GENERAL NOTE

This section first appeared in Bill 68 (in almost the same terms), having been added at committee in the House of Commons on February 1, 2010. Subsection (10)(c) was deleted, when the clause (expulsion and suspension of members of the House of Lords) was lost in lords' amendments (Bill 106). This amendment originated with the conservative opposition.

On December 16, 2009, the leader of the House of Commons announced that the Government would legislate to provide that MPs and peers should pay UK tax.

This section addresses the mischief of non-domiciled persons in, principally, the House of Lords. This is consequential upon the purported ban on foreign political donations: Political Parties, Elections and Referendums Act 2000 (c.41).

The so-called “non doms” were members, or supporters, of the Labour, Liberal Democrat and Conservative parties, but most attention focused on the conservative, Lord Ashcroft, who was believed to have become resident in the United Kingdom for tax purposes in 2000, when he obtained his peerage under Tony Blair.

A non-dom is a person who does not have to pay UK tax on foreign earnings (they do on UK earnings). They may be resident in the United Kingdom. But they are able to rely upon an association with a foreign country, Belize in the case of Lord Ashcroft.

Subsection (1) applies this section to both houses of parliament. Subsection (2) requires members to be treated as resident, ordinarily resident and domiciled in the United Kingdom. These are three separate tax categories. The subsection refers to a member being “treated”, which means that non-domiciled status will have no tax advantage. Subsection (3) defines taxes widely.

Subsections (4), (5) and (10) define membership of the House of Commons and House of Lords; the latter is defined in terms of entitlement to receive writs of summons.

Subsections (6)–(9) define tax years. Subsection (6) excludes: those holding disqualifying judicial offices (CRA 2005 s.137(3)); and the bishops. Subsection (7) starts with the 2010–11 tax year, but subs.(8) excludes MPs in the 2005-10 parliament and peers until three months after s.42 comes into force.

The explanatory notes confirm that this is a deeming provision:

“Part 4 of the Act provides that Members of Parliament and most members of the House of Lords are to be deemed to be resident, ordinarily resident and domiciled (“ROD”) in the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax. As a result, MPs and Lords will be liable to pay these taxes in the UK on their worldwide income, gains and assets regardless of their actual status in the UK, and will be unable to access the remittance basis of taxation.” (para.11.)

David Howarth MP, for the Liberal Democrats (and a legal academic), criticised the deeming provision:

“I have a problem with the deeming provision. It is about domicile rather than residence. Residence is about the present and the immediate past, but domicile is different. Domicile is about long-term intentions—the place in which people are settled permanently in their own minds ... The law on domicile goes back to an idea about personal law ... I think that domicile is an important matter in itself for judging whether someone should be regarded as a proper person to sit in a country’s legislature.” (Hansard, Vol.505, cols 120–121.)

#### **42. Tax status of members of the House of Lords: transitional provision**

- (1) This section applies if, before the end of the period of 3 months beginning with the day on which this section comes into force, a member of the House of Lords (“M”) gives written notice to the Clerk of the Parliaments that M does not want section 41 to apply to M.
- (2) M shall not be a member of the House of Lords at any time after the notice is given and accordingly-
  - (a) M shall not be entitled to receive writs of summons to attend the House, and
  - (b) any writ of summons previously issued to M has no further effect.
- (3) If M is a person excepted from section 1 of the House of Lords Act 1999 by virtue of section 2 of that Act-
  - (a) M shall no longer be excepted from section 1 of the 1999 Act, and
  - (b) if M counted towards the limit under section 2(2) of the 1999 Act, that limit is reduced by one.
- (4) But section 3(1)(b) of the 1999 Act does not apply in relation to M before the end of the period of three years beginning with the date on which the notice is given.

- (5) If M is not such a person, M ceases to be disqualified by virtue of M's peerage (or dignity) for-
  - (a) voting at elections to the House of Commons, or
  - (b) being, or being elected as, a member of that House.
- (6) But subsection (5)(b) does not apply before the end of the period of three years beginning with the date on which the notice is given.
- (7) In relation to M, any reference in section 1(3) or (4)(b) of the Representation of the People Act 1985 to a register of parliamentary electors is to be read as including-
  - (a) any register of local government electors in Great Britain, and
  - (b) any register of local electors in Northern Ireland,
 which was required to be published on any date before the notice is given.
- (8) If, after the notice is given, a peerage is conferred on M or M succeeds to a peerage, subsection (2) above does not stop M being entitled to receive writs of summons to attend the House of Lords by virtue of that peerage. If subsection (3)(a) has applied to M, it does not stop M becoming excepted from section 1 of the House of Lords Act 1999 again by filling a vacancy under section 2 of that Act after the notice is given.
- (9) If, after the notice is given, M becomes the person who is to hold the office of Earl Marshal or perform the office of Lord Great Chamberlain, subsection (2) above does not stop M being entitled to receive writs of summons to attend the House of Lords by virtue of the peerage that led to M becoming the person who is to hold or perform the office in question.
- (10) A person to whom regulation 4 of the European Parliament (House of Lords Disqualification) Regulations 2008 (S.I. 2008/1647) applies is to be treated as a member of the House of Lords for the purposes of this section.

#### GENERAL NOTE

This section first appeared in Bill 68, having been added at committee in the House of Commons on February 1, 2010. It reappeared in amended form, in lords' amendments (Bill 106). This amendment originated with the conservative opposition.

This section permits a peer to escape the effect of s.41 by effectively resigning as a member of the House of Lords within a three-month period: subs.(1) and (2).

The House of Lords Act 1999 (c.34) excluded the hereditary peers from membership, less some 90 members.

Subsections (3)–(6) deal with the lifting of the disqualification on hereditary peers being elected to the House of Commons. Subsection (4) creates a three-year ban. Non-hereditary peers, effectively resigning, are permitted to vote for MPs (but not stand for three years).

Subsection (7) includes local government electoral registers in the definition of parliamentary registers, for the purposes of this Act.

Subsections (8) and (9) deal with a peer succeeding to another peerage.

## PART 5

### TRANSPARENCY OF GOVERNMENT FINANCIAL REPORTING TO PARLIAMENT

#### **43. Inclusion in departmental estimates of resources used by designated bodies**

- (1) The Government Resources and Accounts Act 2000 is amended as follows.

(2) After section 4 insert-

*“Departmental estimates*

**4A Inclusion in departmental estimates of resources used by designated bodies**

- (1) An estimate for a government department for approval by the House of Commons in respect of a financial year must be prepared in accordance with directions issued by the Treasury.
- (2) The Treasury may direct that the estimate is to include information relating to resources expected to be used by any body that is a designated body in relation to the department.
- (3) For the purposes of this section a body is a “designated” body in relation to a government department if-
  - (a) it is designated in relation to the department by an order made by the Treasury, or
  - (b) it falls within a description of body designated in relation to the department by such an order.
- (4) A body, or a description of body, may be designated in relation to a government department for a particular financial year or generally.
- (5) Subsections (6) and (7) apply if the Treasury-
  - (a) expect the use of resources by a body in a financial year to involve payments out of a devolved Consolidated Fund to or for the benefit of the body, but
  - (b) do not expect the use of resources by the body in the year to involve payments out of the Consolidated Fund of the United Kingdom to or for the benefit of the body.
- (6) If an order is in force under which the body would (but for this subsection) be a designated body for the year in relation to a government department-
  - (a) the Treasury must notify the department that the conditions in subsection (5) are met in the case of the body for the year, and
  - (b) the body is to be treated as if it were not designated for the year in relation to the department.
- (7) If no such order is in force, the Treasury may not make one.
- (8) Before designating a body, or a description of body, the Treasury must, where they think it appropriate, consult-
  - (a) the Scottish Ministers,
  - (b) the Department of Finance and Personnel for Northern Ireland, or
  - (c) the Welsh Ministers.
- (9) In determining for any purpose whether a body has a particular relationship with a government department (for example, whether it is controlled by, or otherwise dependent on, the department), the following must be disregarded-
  - (a) the fact that an estimate for the department in respect of a financial year includes information relating to the body, and
  - (b) the fact that the department’s resource accounts for a financial year prepared under section 5 include information relating to the body.

- (10) An order under subsection (3) is to be made by statutory instrument.
- (11) A statutory instrument containing an order under that subsection is subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section “a devolved Consolidated Fund” means-
  - (a) the Scottish Consolidated Fund,
  - (b) the Consolidated Fund of Northern Ireland, or
  - (c) the Welsh Consolidated Fund.”
- (3) In section 5(1) (resource accounts: preparation), for paragraphs (a) and (b) substitute-
  - “(a) resources acquired, held or disposed of during the year by-
    - (i) the department, or
    - (ii) any body that is a designated body under section 4A in relation to the department for the year, and
  - (b) the use of resources during the year by the department or any such body.”
- (4) In section 6(1) (resource accounts: scrutiny by the Comptroller and Auditor General), for paragraph (d) substitute-
  - “(d) that-
    - (i) the financial transactions of the department, and
    - (ii) the financial transactions of any body that is a designated body under section 4A in relation to the department for the year in question,
 are in accordance with any relevant authority.”

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms. It has to be read with the following section. Together, they comprise Pt 5: transparency of government financial reporting to parliament. As is evident from especially Pt 3, departmental concerns for amending legislation have come to dominate the Act.

The Government Resources and Accounts Act 2000 (c.20) is, as the name suggests, a measure dealing with accounting. Sections 3 and 4 are: government funds and accounts. And ss.5–8 are: departmental accounts.

This section deals with: departmental estimates; inserted between ss.3 and 4 and ss.5–8.

New s.4A of that Act is: inclusion in departmental estimates of resources used by designated bodies.

New subs.(8) makes clear this section extends throughout the United Kingdom. Subsection (3) explains “designated body”.

#### **44. Corresponding provision in relation to Wales**

- (1) Part 5 of the Government of Wales Act 2006 (finance) is amended as follows.
- (2) After section 126 insert-

##### **“126A Inclusion in Budget motions of resources used by designated bodies**

- (1) A Budget motion for a financial year may include information relating to resources expected to be used by any body that is a designated body in relation to a relevant person.
- (2) For the purposes of this section a body is a “designated” body in relation to a relevant person if-
  - (a) it is designated in relation to the relevant person by an order made by the Welsh Ministers, or

- (b) it falls within a description of body designated in relation to the relevant person by such an order.
- (3) A body, or a description of body, may be designated in relation to a relevant person for a particular financial year or generally.
- (4) If the Welsh Ministers expect the use of resources by a body in a financial year to involve payments out of a relevant Consolidated Fund to or for the benefit of the body, they may not make an order under which the body would be a designated body for the year unless the Treasury have consented to the making of the order.
- (5) “A relevant Consolidated Fund” means-
  - (a) the Consolidated Fund of the United Kingdom,
  - (b) the Scottish Consolidated Fund, or
  - (c) the Consolidated Fund of Northern Ireland.
- (6) The Welsh Ministers must, where they think it appropriate, consult the Treasury before designating a body or a description of body.
- (7) In determining for any purpose whether a body has a particular relationship with a relevant person (for example, whether it is controlled by, or otherwise dependent on, the person), the following must be disregarded-
  - (a) the fact that the provisions of a Budget motion relating to the relevant person in respect of a financial year include information relating to the body, and
  - (b) the fact that the relevant person’s accounts for a financial year prepared under this or any other Act include information relating to the body.
- (8) An order under subsection (2) is to be made by statutory instrument.
- (9) A statutory instrument containing an order under that subsection is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (10) But subsection (9) does not apply if a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.”
- (3) Schedule 8 (Auditor General for Wales) is amended as follows.
- (4) In paragraph 13 (accounts of Auditor General), after sub-paragraph (1) insert-
  - “(1A) The directions which the Treasury may give under sub-paragraph (1) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Auditor General.”
- (5) In paragraph 15 (audit of accounts of Auditor General)-
  - (a) in sub-paragraph (5)(b)-
    - (i) for “the Auditor General”, in the first place, substitute “a relevant person”; and
    - (ii) for “the Auditor General”, in the second place, substitute “the relevant person”; and
  - (b) after sub-paragraph (5) insert-
    - “(5A) In sub-paragraph (5)(b) “relevant person” means-
      - (a) the Auditor General, or
      - (b) any person to whose financial affairs and transactions the accounts are to relate by virtue of paragraph 13(1A).”

- (6) In paragraph 17(8) (access of Auditor General to documents), after paragraph (b) insert-
- “(ba) in a case within that paragraph relating to any accounts which the Public Services Ombudsman for Wales is directed to prepare under paragraph 16 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005, the Ombudsman and any person to whose financial affairs and transactions the accounts are to relate by virtue of sub-paragraph (1A) of that paragraph.”
- (7) In paragraph 16 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005 (accounts), after sub-paragraph (1) insert-
- “(1A) The directions which the Treasury may give under sub-paragraph (1)(b) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Ombudsman.”

**GENERAL NOTE**

This section first appeared in Bill 142, in the same terms. It has to be read with the previous section.

Part 5 of the Government of Wales Act 2006 (c.32) is: finance.

This section adds a new s.126A to that Act: inclusion in budget motions of resources used by designated bodies. This is in similar terms to s.43.

**PART 6**

**PUBLIC RECORDS AND FREEDOM OF INFORMATION**

**45. Transfer of records to Public Record Office**

- (1) In section 3 of the Public Records Act 1958 (selection and preservation of public records)-
- (a) in subsection (4) (transfer to Public Record Office or to other appointed place of deposit of public records selected for permanent preservation), for “thirty years” substitute “20 years”, and
- (b) after that subsection insert-
- “(4A) Until the end of the period of 10 years beginning with the commencement of section 45 of the Constitutional Reform and Governance Act 2010, subsection (4) has effect subject to any order made under subsection (2) of that section.”
- (2) The Lord Chancellor may by order make transitional, transitory or saving provision in connection with the coming into force of subsection (1)(a).
- (3) An order under subsection (2) may in particular-
- (a) provide for the time within which any records are to be transferred to the Public Record Office or other place of deposit referred to in section 3(4) of the Public Records Act 1958, and
- (b) make different provision in relation to records of different descriptions.
- (4) An order under this section is to be made by statutory instrument.
- (5) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

**GENERAL NOTE**

This section first appeared in HL Bill 40, in the same terms. It has to be read with the following section. Together, they form Pt 6: public records and freedom of information.

On October 25, 2007, the Prime Minister had announced a review of the 30-year rule regarding the disclosure of public records. The (Paul) Dacre review reported in January 2009, recommending its reduction to 15 years. On June 10, 2009 the Prime Minister announced that there would be a reduction to 20 years. On February 25, 2010, the Government responded formally to the review: Cm.7822.

This clause was introduced at report in the House of Commons on March 2, 2010.

This section amends s.3 of the Public Records Act 1958 (c.51): selection and preservation of public records. Section 3(4) of that Act provided for public records being made available after 30 years. This section, through subs.(1), reduces that period to 20 years.

This section also inserts a new subs.(4A) in that Act. It makes the new 20-year rule subject, for a period of ten years, to any order made by the lord chancellor under subs.(2) of this section: transitional provisions.

Subsections (2)–(5) provide for orders of the lord chancellor.

**46. Freedom of information**

- (1) Schedule 7 (which makes amendments of the Freedom of Information Act 2000) has effect.
- (2) The Secretary of State may by order make transitional, transitory or saving provision in connection with the coming into force of paragraph 4 of Schedule 7 (which reduces from 30 years to 20 years the period at the end of which a record becomes a historical record for the purposes of Part 6 of the Freedom of Information Act 2000).
- (3) An order under subsection (2) may in particular-
  - (a) make provision about the time when any records are to become historical records for the purposes of Part 6 of the Freedom of Information Act 2000, and
  - (b) make different provision in relation to records of different descriptions.
- (4) An order under subsection (2) is to be made by statutory instrument.
- (5) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

**GENERAL NOTE**

This section first appeared in HL Bill 40, in similar terms. It has to be read with the previous section. It reappeared in amended form in lords' amendments (Bill 106).

This section amends the Freedom of Information Act 2000 (c.36) generally.

This clause was introduced at report in the House of Commons on March 2, 2010. Most of it— subs.(2)–(5)—was added at committee in the House of Lords on April 7, 2010.

Subsection (1) gives effect to Sch.7. Only para.4 relates to the redefinition of historical records (over 20 years).

Subsections (2)–(5) provide for secretary of state orders.

**PART 7****MISCELLANEOUS AND FINAL PROVISIONS****47. Section 3 of the Act of Settlement**

- (1) For the avoidance of doubt, the repeal in section 18(7) of the Electoral Administration Act 2006 of the entry in Schedule 7 to the British

Nationality Act 1981 (entry which modified certain disqualifications imposed by section 3 of the Act of Settlement) applied only so far as the modification made by that entry related to-

- (a) membership of the House of Commons, or
  - (b) anything from which a person is disqualified by virtue of a disqualification from membership of that House.
- (2) Section 3 of the Act of Settlement has effect accordingly, and has done so since the coming into force of section 18 of the Electoral Administration Act 2006.

#### GENERAL NOTE

This section first appeared in Bill 68, in the same terms. It is the first of six sections, comprising Pt 7: miscellaneous and final provisions.

This section is for the avoidance of doubt. It arose as follows.

Section 3 of the Act of Settlement 1700 (c.2) is: further provisions for securing the religion, laws and liberties of these realms. It provides in part:

“That after the said Limitation shall take Effect as aforesaid no Person born out of the Kingdoms of England Scotland or Ireland or the Dominions thereunto belonging (although he be ... made a Denizen, except such as are born of English Parents) shall be capable to be of the Privy Council [sic] or a Member of either House of Parliament or to enjoy any Office or Place of Trust either Civill [sic] or Military or to have any Grant of Lands Tenements or Hereditaments from the Crown to himself or to any other or others in Trust for him.”

Schedule 7 (consequential amendments) of the British Nationality Act 1981 (c.61) included the following regarding the Act of Settlement 1700:

“In section 3, the words from ‘That after the said limitation shall take effect’ to ‘in trust for him’ (which impose certain disqualifications) shall not apply to Commonwealth citizens or citizens of the Republic of Ireland.”

Section 3 of the Act of Settlement 1700 remained in place, but Sch.7 of the British Nationality Act 1981 disappplied it as regarding commonwealth and Republic of Ireland citizens. They could become members of either house of parliament, and hold offices under the crown.

However, s.18(7) of the Electoral Administration Act 2006 (c.22) reads: “In Schedule 7 to the British Nationality Act 1981 (c.61), the entry relating to the Act of Settlement is omitted.”

This had the effect of disapplying the disapplication regarding commonwealth and Republic of Ireland citizens, meaning that persons of these nationalities could not—under s.3 of the Act of Settlement 1700—become members of either house of parliament or hold offices under the crown. But s.18(1) of the Electoral Administration Act 2006 provides:

“In section 3 of the Act of Settlement ... the words ... (which impose certain disqualifications) do not apply (so far as they relate to the House of Commons) to a person who is (a) a qualifying Commonwealth citizen, or (b) a citizen of the Republic of Ireland.”

The net effect was to exclude commonwealth citizens (not Irish citizens) who did not have indefinite leave to remain in the United Kingdom, from the House of Commons. But what about the rights of those persons to become members of the House of Lords and to hold offices under the crown?

Subsection (1) construes the repeal to be limited to the Sch.7 entry, and not impacting upon the original s.3.

Subsection (2) construes this interpretation retrospectively, to when s.18 of the Electoral Administration Act 2006 came into force.

The explanatory notes read:

“...since the drafting of the legislation did not contain provisions expressly saving the first entry in Schedule 7 ... in relation to membership of the House of Lords and other offices under the Crown, a question was raised about whether the eligibility of Commonwealth or Republic of Ireland citizens for membership of the House of Lords and other positions was affected ... The Government did not consider that the

eligibility was affected. In particular, it clearly was not the intention of Parliament in passing the 2006 Act to change the entitlement of Commonwealth and Republic of Ireland citizens to sit in the House of Lords. The Government nevertheless concluded that it was best to put the issue beyond doubt.” (paras 52–53.)

#### 48. Parliamentary elections: counting of votes

- (1) Schedule 1 to the Representation of the People Act 1983 (parliamentary elections rules) is amended as follows.
- (2) In rule 44 (attendance at counting of votes) after paragraph (5) insert-
  - “(6) In making arrangements under this rule, the returning officer shall have regard to the duty imposed on him by rule 45(3A) below.”
- (3) In rule 45 (the count)-
  - (a) after paragraph (3) insert-
    - “(3A) The returning officer shall take reasonable steps to begin counting the votes given on the ballot papers as soon as practicable within the period of four hours starting with the close of the poll.”;
  - (b) after paragraph (7) insert-
    - “(8) The Electoral Commission shall issue guidance to returning officers on the duty imposed by paragraph (3A) above.”
- (4) After rule 53 insert-

##### *“Counting of votes: statement by returning officer*

- (1) In a contested election, if the counting of the votes given on the ballot papers did not begin within the period specified in rule 45(3A) above, the returning officer shall before the expiry of the period of 30 days starting with the day on which the poll closed-
  - (a) prepare and publish a statement giving the information specified in paragraph (2) below, and
  - (b) deliver it to the Electoral Commission.
- (2) The statement must-
  - (a) specify the time at which the counting of the votes given on the ballot papers began,
  - (b) describe the steps taken under rule 45(3A) above, and
  - (c) explain why the counting of the votes given on the ballot papers did not start within the period specified in rule 45(3A) above.
- (3) Where a statement is delivered to the Electoral Commission under paragraph (1)(b) above, the Commission shall specify in any election report they produce that a statement has been delivered to them under that paragraph in respect of the constituency to which the statement relates.
- (4) In paragraph (3) above “election report” means a report under section 5(1) or (2A) of the Political Parties, Elections and Referendums Act 2000 in relation to the parliamentary election in question.”

GENERAL NOTE

This section first appeared in Bill 68. It reappeared in HL Bill 40, in amended form. This was as a result of a conservative amendment.

Schedule 1 of the Representation of the People Act 1983 (c.2) is: parliamentary elections rules. It was last amended by the Electoral Administration Act 2006.

Subsection (2) amends r.44 and subs.(3) amends r.45, to the effect that the counting of votes should be speeded up.

Subsection (4) adds a new r.53ZA, requiring returning officers to explain themselves to the Electoral Commission, if they did not comply with the four-hour rule.

This section entered into force, under s.52(3)(c), on April 8, 2010, in time for the General Election on May 6, 2010.

Michael Wills MP said at third reading in the House of Commons on March 2, 2010:

“I want to make it clear that the new clause respects the independence of the electoral returning officers, and I think that everyone in the House respects that. However, I should make it clear that if that independence is exercised at the forthcoming general election in a way that is seen with hindsight to have flouted the clearly expressed wish of this House that there should be a presumption in favour of an overnight count ... I have no doubt whatever that the new House elected in the next two or three months will return to the issue.” (*Hansard*, Vol.506, col.901.)

#### 49. Meaning of “Minister of the Crown”

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

GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

This section is definitional. Query why a Pt 7 section has been used?

#### 50. Financial provision

There is to be paid out of money provided by Parliament-

- (a) any expenditure incurred by a Minister of the Crown by virtue of this Act;
- (b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided.

GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

#### 51. 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 any provision of this Act.
- (2) An order under subsection (1) may-
  - (a) amend, repeal or revoke any existing statutory provision;
  - (b) include supplementary, incidental, transitional, transitory or saving provision.
- (3) “Existing statutory provision” means-
  - (a) a provision of an Act passed on or before the last day of the Session in which this Act is passed;

- (b) a provision of subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made on or before that day.
- (4) An order under subsection (1) is to be made by statutory instrument.
- (5) A statutory instrument containing an order under subsection (1) which amends or repeals a provision of an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) 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.

#### GENERAL NOTE

This section first appeared in Bill 142, in the same terms.

Subsections (1)–(3) give powers to ministers. They relate to consequential provisions, effectively amending the statute book.

Subsections (4)–(6) provide for both positive and negative resolutions.

## 52. Extent, commencement, transitional provision and short title

- (1) An amendment or repeal contained in this Act has the same extent as the Act or instrument or relevant part of the Act or instrument to which the amendment or repeal relates (ignoring extent by virtue of an Order in Council).
- (2) This Act comes into force on such day as a Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order appoint; and different days may be appointed for different purposes.
- (3) Subsection (2) does not apply to the following provisions of this Act (which accordingly come into force on the day this Act is passed)-
  - (a) section 41;
  - (b) section 42;
  - (c) the provisions of this Part.
- (4) 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.
- (5) An order under subsection (2) or (4) is to be made by statutory instrument.
- (6) This Act may be cited as the Constitutional Reform and Governance Act 2010.

#### GENERAL NOTE

This section first appeared in Bill 142. It reappeared in lords' amendments (Bill 106).

Subsection (1) relates to the extent of amendments or repeals, ignoring extents by virtue of orders in council.

Subsections (2) and (3) provide for commencement.

The explanatory notes state, regarding extent generally:

“The provisions of the Act extend to the whole of the United Kingdom.

The Act largely addresses reserved and excepted matters although there are some provisions that affect the executive functions of the devolved administrations.” (para.56.)

This does not mean that the Act provided expressly for Northern Ireland.

## SCHEDULES

### SCHEDULE 1

### Section 2

## THE CIVIL SERVICE COMMISSION

### PART I

#### THE COMMISSIONERS

#### *Membership of the Commission*

1. (1) 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.
- (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”).
- (2) The First Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service.
- (3) A person’s selection for recommendation must be on merit on the basis of fair and open competition.
- (4) Before selecting a person, the Minister must consult—
  - (a) the First Ministers for Scotland and Wales, and
  - (b) the relevant opposition leaders (see sub-paragraph (8)).
- (5) The terms on which the First Commissioner holds office are determined by the Minister for the Civil Service.
- (6) The period of the appointment is to be no more than five years.
- (7) A person cannot be appointed as First Commissioner more than once.
- (8) 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.
- (9) In sub-paragraph (8)—
  - “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;
  - “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.

#### *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.
- (3) A person’s selection for recommendation must be on merit on the basis of fair and open competition.
- (4) A person must not be selected without the agreement of the First Commissioner.
- (5) The terms on which a Commissioner holds office are determined by the Minister.
- (6) The period of the appointment is to be no more than five years.
- (7) The Minister must not make a determination under sub-paragraph (5) without the agreement of the First Commissioner.
- (8) A person cannot be appointed as a Commissioner more than once.
- (9) A person cannot be a Commissioner and the First Commissioner at the same time.
- (10) But, if the office of First Commissioner is vacant, the Minister may authorise a Commissioner to carry out the functions of First Commissioner until the vacancy is filled.
- (11) Sub-paragraphs (12) and (13) apply in relation to the appointment as Commissioner of a person holding another public office (including an office under the Crown) if the Minister and the First Commissioner are both satisfied that the functions of the other

public office are concerned with matters similar to matters with which the Commission's functions are concerned.

- (12) The Minister and the First Commissioner may agree to disapply sub-paragraph (3) or (6).
- (13) 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 other public office;
  - (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-
  - (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.
- (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-
  - (a) the 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.
- (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).
- (6) A person becomes bankrupt if-
  - (a) in England and Wales or Northern Ireland, a bankruptcy order is made in relation to the person, or
  - (b) in Scotland, the person's estate is sequestrated.

#### *Compensation for loss of office of First Commissioner or 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 or Commissioner, and
  - (b) the Minister is satisfied that, because of the circumstances in which the person ceased to hold office, compensation should be paid to the person.

### PART 2

#### THE COMMISSION

#### *Status of the Commission and its property*

7. (1) The Commission (including its members and employees) 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.

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

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### *Committees*

9. (1) The Commission may establish committees.  
(2) A committee of the Commission may establish sub-committees.  
(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.  
(2) The validity of proceedings of the Commission or a committee or subcommittee is not affected by-  
(a) a vacancy among the members, or  
(b) a defect in the appointment of a member.

### *Staff*

11. The Commission may employ staff.

### *Pensions*

12. (1) Employment by the Commission is included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 may apply.  
(2) The offices of First Commissioner and Commissioner are included among the offices to which such a scheme may apply.  
(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 Commission”,  
(b) in the list of “Offices” insert, at the appropriate place, “Civil Service Commissioner”, and  
(c) in that list the reference to the First Civil Service Commissioner is to be read as a reference to the office of the First Civil Service Commissioner established by this Schedule.  
(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.  
(5) The payments must be made at the times directed by the Minister.

### *Arrangements for assistance*

13. (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.  
(3) Arrangements may provide for the making of payments by the Commission.

### *Delegation*

14. (1) The Commission may delegate functions to-  
(a) any of its members;  
(b) any of its committees;  
(c) any of its employees;  
(d) a person with whom arrangements are made under paragraph 13 or a 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.

### *Financial provisions*

15. (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.  
(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 a condition under sub-paragraph (2), the Minister must consult the Commission.

*Accounts*

16. (1) The Commission must keep proper accounts and proper records in relation to them.
- (2) The Commission must prepare a statement of accounts for each financial year (see paragraph 18).
- (3) The statement must give a true and fair view of-
- the state of the Commission's affairs at the end of the financial year, and
  - 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-
- the information to be contained in the statement,
  - the manner in which the information is to be presented, or
  - 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.
- (7) The Comptroller and Auditor General must-
- examine, certify and report on the statement, and
  - lay copies of the statement and the report before Parliament (unless it has been arranged for the Minister to do so).

*Reports*

17. (1) The Commission-
- must, as soon as practicable after the end of each financial year (see paragraph 18), prepare a report about the carrying out of its functions during the year, and
  - 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 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.
- (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).
- (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"*

18. For the purposes of paragraphs 16 and 17, each of the following is a "financial year"-
- the period which begins when section 2 of this Act comes into force and ends with the following 31 March;
  - each successive period of 12 months.

*Documentary evidence*

19. (1) The application of the Commission's seal is to be authenticated by the signature of any of the following-
- a member of the Commission;
  - if the Commission's staff includes a chief executive, the chief executive;
  - any person authorised (whether generally or specifically) for the purpose by anyone within paragraph (a) or (b).
- (2) A document purporting to be duly executed under the Commission's seal or signed on its behalf-
- is to be received in evidence, and
  - is to be taken to be executed or signed in that way, unless the contrary is proved.
- (3) This paragraph does not extend to Scotland.

## GENERAL NOTE

This Schedule first appeared in Bill 142, in the same terms. It is introduced by s.2(2). It is in two Parts: the commissioners; and the commission. It contains 19 paragraphs.

## CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISION RELATING TO PART I

### PART I

#### CONSEQUENTIAL AMENDMENTS TO ACTS OF PARLIAMENT

#### *Parliamentary Commissioner Act 1967 (c. 13)*

1. In Schedule 2, in the note about the Cabinet Office, omit “and Head of the Home Civil Service”.

#### *Superannuation Act 1972 (c. 11)*

2. In section 2(10) for “home civil service or the diplomatic service” substitute “civil service of the State”.

#### *House of Commons Disqualification Act 1975 (c. 24)*

3. In Schedule 1-
  - (a) in Part 2, at the appropriate place, insert “The Civil Service Commission”;
  - (b) in Part 3 omit “Civil Service Commissioner”.

#### *Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

4. In Part 2 of Schedule 1, at the appropriate place, insert “The Civil Service Commission”.

#### *House of Commons (Administration) Act 1978 (c. 36)*

5.
  - (1) Amend section 2 as follows.
  - (2) In subsections (2) and (3) for “Home Civil Service” (wherever appearing) substitute “statutory home civil service”.
  - (3) After subsection (4) insert-
    - “(5) “The statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

#### *Civil Service (Management Functions) Act 1992 (c. 61)*

6.
  - (1) Amend section 1 as follows.
  - (2) For subsections (1) and (2) substitute-
    - “(1) This section applies to the functions conferred on the Minister for the Civil Service by section 3 of the Constitutional Reform and Governance Act 2010 (management of the civil service, excluding the diplomatic service).
    - (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.”
  - (3) Omit subsection (5).
  - (4) For the italic cross-heading before section 1 substitute “*Civil service (excluding the diplomatic service)*”.
7. In section 2(1)(a) for “Her Majesty’s Home Civil Service” substitute “the civil service (excluding the diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010”.

#### *Government of Wales Act 1998 (c. 38)*

8. In paragraph 3(1) and (2) of Schedule 6 for “Her Majesty’s Home Civil Service” substitute “the civil service of the State”.

#### *Scotland Act 1998 (c. 46)*

9.
  - (1) Amend section 51 as follows.
  - (2) In subsection (2) for “Home Civil Service” substitute “civil service of the State”.
  - (3) For subsection (3) substitute-

“(3) See Part 1 of the Constitutional Reform and Governance Act 2010 (in particular, sections 3 and 4) for provision affecting-

- (a) subsection (1), and
  - (b) any other enactment about the appointment of persons mentioned in subsection (2).”
- (4) For subsection (4) substitute-
- “(4) See also section 1 of the Civil Service (Management Functions) Act 1992 under which functions conferred on the Minister for the Civil Service by section 3 of the Constitutional Reform and Governance Act 2010 may be delegated to the Scottish Ministers etc.”
- (5) Omit subsection (9).

*Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2)*

**10.**

- (1) Amend section 24 as follows.
- (2) In subsection (3)(c)(iii) for “Her Majesty’s Home Civil Service” substitute “the statutory home civil service”.
- (3) After subsection (7) insert-
  - “(8) In this section “the statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

*Regulation of Investigatory Powers Act 2000 (c. 23)*

**11.**

- (1) Amend section 81 as follows.
- (2) In subsection (7) for “home civil service or diplomatic service” substitute “statutory civil service (or any part of it)”.
- (3) After subsection (7) insert-
  - “(8) In subsection (7) “the statutory civil service” means-
    - (a) the civil service within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act), but
    - (b) also includes the Government Communications Headquarters.”

*Freedom of Information Act 2000 (c. 36)*

- 12.** In Part 6 of Schedule 1 for “The Civil Service Commissioners” substitute “The Civil Service Commission”.

*Tax Credits Act 2002 (c. 21)*

**13.**

- (1) Amend section 52 as follows.
- (2) In subsection (7) for “Her Majesty’s Home Civil Service” substitute “the statutory home civil service”.
- (3) After subsection (7) insert-
  - “(8) In subsection (7) “the statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

*Extradition Act 2003 (c. 41)*

**14.**

- (1) Amend section 101 as follows.
- (2) In subsection (5) for “home civil service or diplomatic service” substitute “statutory civil service (or any part of it)”.
- (3) After subsection (5) insert-
  - “(6) In subsection (5) “the statutory civil service” means the civil service within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

*Government of Wales Act 2006 (c. 32)*

**15.**

- (1) Amend section 52 as follows.
- (2) In subsections (2) and (9) for “Home Civil Service” substitute “civil service of the State”.
- (3) For subsection (3) substitute-

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- (3) See Part 1 of the Constitutional Reform and Governance Act 2010 (in particular, sections 3 and 4) for provision affecting-
- (a) subsection (1), and
  - (b) any other enactment about the appointment of persons as members of the staff of the Welsh Assembly Government.”
- (4) For subsection (4) substitute-
- “(4) See also section 1 of the Civil Service (Management Functions) Act 1992 under which functions conferred on the Minister for the Civil Service by section 3 of the Constitutional Reform and Governance Act 2010 may be delegated to the Welsh Ministers etc.”
- (5) Omit subsection (10).

### *Police and Justice Act 2006 (c. 48)*

16. In paragraph 7(4)(c) of Schedule 1 for “Her Majesty’s Home Civil Service” substitute “the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act)”.

### *Parliament (Joint Departments) Act 2007 (c. 16)*

- 17.
- (1) Amend section 3 as follows.
  - (2) In subsection (2) for “Home Civil Service” (wherever appearing) substitute “statutory home civil service”.
  - (3) After subsection (3) insert-
    - “(4) “The statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

### *Crossrail Act 2008 (c. 18)*

- 18.
- (1) Amend Schedule 12 as follows.
  - (2) In paragraphs 13(3) and 16(2)(a) and (b) for “Her Majesty’s Home Civil Service” substitute “any part of the statutory home civil service”.
  - (3) In paragraph 20(2), after the definition of “enactment”, insert-
    - ““the statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act);”.

## PART 2

### CONSEQUENTIAL AMENDMENTS TO OTHER LEGISLATION

### *Civil Service Orders in Council*

19. The following are revoked-
- (a) the Civil Service Order in Council 1995;
  - (b) the Civil Service (Amendment) Order in Council 1995;
  - (c) the Civil Service (Amendment) Order in Council 1996;
  - (d) the Civil Service (Amendment) Order in Council 1997;
  - (e) the Civil Service (Amendment) Order in Council 1998;
  - (f) the Civil Service (Amendment) Order in Council 1999;
  - (g) the Civil Service (Amendment) Order in Council 2000;
  - (h) the Civil Service (Amendment) Order in Council 2001;
  - (i) the Civil Service (Amendment) Order in Council 2002;
  - (j) the Civil Service (Amendment) Order in Council 2004;
  - (k) the Civil Service (Amendment) Order in Council 2005;
  - (l) the Civil Service (Amendment) Order in Council 2007;
  - (m) the Civil Service (Amendment) (No. 2) Order in Council 2007;
  - (n) the Civil Service (Amendment) (No. 3) Order in Council 2007;
  - (o) the Civil Service (Amendment) Order in Council 2008;
  - (p) the Civil Service (Amendment) (No. 2) Order in Council 2008.

### *Diplomatic Service Orders in Council*

20. The following are revoked-

- (a) the Diplomatic Service Order in Council 1991;
- (b) the Diplomatic Service (Amendment) Order in Council 1994;
- (c) the Diplomatic Service (Amendment) (No. 2) Order in Council 1994;
- (d) the Diplomatic Service (Amendment) Order in Council 1995;
- (e) the Diplomatic Service (Amendment) Order in Council 2004;
- (f) the Diplomatic Service (Amendment) Order in Council 2009.

*Servants of the Crown (Parliamentary, European Assembly and Northern Ireland Assembly Candidature) Order 1987*

21. This is revoked.

*Revenue and Customs (Complaints and Misconduct) Regulations 2005 (S.I. 2005/3311)*

22.

- (1) Amend Schedule 1 as follows.
- (2) For “Head of the Home Civil Service” (wherever appearing) substitute “designated permanent secretary”.
- (3) After paragraph 12(2)(d) insert-
  - “(da) after the definition of “the Deputy Chairman” insert-
    - ““the designated permanent secretary” means the permanent secretary in the civil service of the State designated by the Minister for the Civil Service for the purposes of this Part;”.”

23. In Schedules 3 and 4 for “Head of the Home Civil Service” (wherever appearing) substitute “designated permanent secretary”.

*Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242)*

24. In article 2(2) for “Home Civil Service” substitute “civil service of the State”.

PART 3

TRANSITIONAL PROVISION RELATING TO  
THE CIVIL SERVICE COMMISSION

*Definitions*

25.

- (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) 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 1995 Order or the 1991 Order.
- (3) References to “the old commission” are to be read accordingly.
- (4) A person is “head of the old commission” if the person is the First Civil Service Commissioner in relation to the old commission.
- (5) “Commission” has the same meaning as in Chapter 1 of this Part of this Act.
- (6) “First Commissioner” and “Commissioner” have the same meanings as in Schedule 1 to this Act.
- (7) “The 1995 Order” and “the 1991 Order” mean, respectively, the Civil Service Order in Council 1995 and the Diplomatic Service Order in Council 1991.

*Head of the old commission to become First Commissioner*

26.

- (1) The person who is head of the old commission immediately before section 2 of this Act comes into force becomes the First Commissioner on that section coming into force.
- (2) Sub-paragraphs (3) and (4) below apply instead of paragraph 2(5) and (6) of Schedule 1 to this Act.
- (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.
- (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.
- (5) If those terms provide for the payment of remuneration or allowances or make provision for a pension, the Commission must make the payments or provision accordingly.

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- (6) The person's becoming First Commissioner as a result of this paragraph is not an appointment for the purposes of paragraph 2(7) of Schedule 1 to this Act.

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

#### **27.**

- (1) This paragraph applies if the person who is the First Commissioner is a former head of the old commission.
- (2) The period for which the person is to hold office (apart from this sub-paragraph) 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 the First Commissioner, and
  - (b) the period or periods for which the person is head of the old commission.

### *Members of the old commission to become Commissioners*

#### **28.**

- (1) The persons who are members of the old commission immediately before section 2 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.
- (3) Sub-paragraphs (4) and (5) below apply instead of paragraph 3(5) and (6) of Schedule 1 to this Act.
- (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 Commissioner are-
  - (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) If those terms provide for the payment of remuneration or allowances or make provision for a pension, the Commission must make the payments or provision accordingly.
- (7) The person's becoming Commissioner as a result of this paragraph is not an appointment for the purposes of paragraph 3(8) of Schedule 1 to this Act.

### *Restriction on period of office for former member of old commission*

#### **29.**

- (1) This paragraph applies if a person who is a Commissioner is a former member of the old commission.
- (2) The period for which the person is to hold office (apart from this sub-paragraph) 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, and
  - (b) the period or periods for which the person is a member of the old commission.
- (4) Sub-paragraph (3)(a) and (b) does not include any period for which the person is also Her Majesty's Commissioner for Public Appointments.
- (5) Sub-paragraph (3)(b) does not include any period for which the person is also head of the old commission.

### *Audits of recruitment policies and practices*

#### **30.**

- (1) This paragraph applies in relation to an audit under article 4(3) of the 1995 Order or the 1991 Order that is started, but not completed, before the coming into force of section 2 of this Act.
- (2) So far as the audit is within the Commission's function under section 14 of this Act, the Commission may continue and complete the audit.

### *Requirements to publish recruitment information*

- 31.** Any requirement under article 4(4) of the 1995 Order or the 1991 Order imposed before the coming into force of section 2 of this Act must be complied with notwithstanding the revocation of the Order by Part 2 of this Schedule.

### *Appeals by civil servants*

#### **32.**

- (1) This paragraph applies in relation to an appeal under article 4(5) of the 1995 Order or the 1991 Order that is made, but not determined, before the coming into force of section 2 of this Act.

- (2) The Commission may continue with and determine the appeal and paragraphs (a) to (c) of article 4(5) of the 1995 Order or the 1991 Order (as the case may be) continue to apply accordingly.
- (3) For this purpose it does not matter if Chapter 1 of this Part of this Act does not apply to the appellant or any party mentioned in article 4(5)(b) of the 1995 Order or the 1991 Order (as the case may be).

**33.**

- (1) This paragraph applies in relation to a matter occurring before the coming into force of section 2 of this Act which could have been made the subject of an appeal under article 4(5) of the 1995 Order or the 1991 Order immediately before the coming into force of that section.
- (2) The Commission may hear and determine an appeal in relation to the matter and article 4(5) of the 1995 Order or the 1991 Order (as the case may be) is to apply accordingly.
- (3) For this purpose it does not matter if Chapter 1 of this Part of this Act does not apply to the appellant or any party mentioned in article 4(5)(b) of the 1995 Order or the 1991 Order (as the case may be).

*First annual report***34.**

- (1) This paragraph applies to the first report that the Commission is required to prepare under paragraph 17(1)(a) of Schedule 1 to this Act.
- (2) The report must, for the relevant period, include the information required by-
  - (a) article 8(1)(a) to (c) of the 1995 Order;
  - (b) article 4A(1)(a) to (c) of the 1991 Order.
- (3) For this purpose it does not matter if any of that information relates to a part of the civil service of the State to which Chapter 1 of this Part of this Act does not apply.
- (4) “The relevant period” means the period-
  - (a) beginning with-
    - (i) for the purposes of sub-paragraph (2)(a), the end of the period covered by the last report published under article 8(1) of the 1995 Order;
    - (ii) for the purposes of sub-paragraph (2)(b), the end of the period covered by the last report published under article 4A(1) of the 1991 Order;
  - (b) ending when section 2 of this Act comes into force.

*Transfer of property, rights and liabilities***35.**

- (1) The Minister for the Civil Service may make a scheme-
  - (a) specifying property, rights and liabilities of the Crown (or held on behalf of the Crown) that are relevant to the old commission’s functions, and
  - (b) transferring the specified property, rights and liabilities to the Commission;
 and the transfer has effect in accordance with the terms of the scheme.
- (2) The scheme may operate in relation to property, rights and liabilities-
  - (a) whether or not they would otherwise be capable of being transferred,
  - (b) without any instrument or other formality being required, and
  - (c) irrespective of any kind of requirement for consent that would otherwise apply.
- (3) The scheme may include supplementary, incidental, transitional, transitory or saving provision, including (in particular) provision-
  - (a) for the continuing effect of things done by, on behalf of or in relation to the Crown (or a person acting on behalf of the Crown);
  - (b) for the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the Crown (or a person acting on behalf of the Crown);
  - (c) for references to the Crown or a person who acts on behalf of the Crown in any agreement (whether written or not) or instrument or other document to be treated as or as including references to the Commission;
  - (d) for shared ownership, use or access.

*Information previously held by old commission***36.**

- (1) The Minister for the Civil Service must make arrangements for the Commission to be provided with any information-
  - (a) which was held by (or on behalf of) the old commission for the purposes of the old commission’s functions, and
  - (b) which the Commission reasonably requires for the purposes of its functions.

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- (2) For the purposes of the Data Protection Act 1998 and the Freedom of Information Act 2000, any requests made to the old commission relating to information provided to the Commission under sub-paragraph (1) are to be dealt with by the Commission (so far as they were not dealt with by the old commission).

### *Preparatory work*

#### **37.**

- (1) During the preparatory period the old commission may carry out, in the name and on behalf of the Commission, any functions given to the Commission by Schedule 1 to this Act.
- (2) “The preparatory period” is the period that-
  - (a) starts when this Act is passed, and
  - (b) ends when section 2 of this Act comes into force.

## PART 4

### OTHER TRANSITIONAL PROVISION

### *Application of section 16(1) of the Interpretation Act 1978*

#### **38.**

- (1) In this Part of this Schedule “old management functions” means functions that cease to be exercisable on the coming into force of section 3 of this Act.
- (2) Section 16(1) of the Interpretation Act 1978 applies in relation to an old management function ceasing to be exercisable as if-
  - (a) the function had been conferred by an Act, and
  - (b) that Act were repealed by section 3 of this Act.
- (3) So far as not covered by sub-paragraph (2), section 16(1) of the 1978 Act applies in relation to the revocation of an Order in Council by Part 2 of this Schedule as if it were the repeal of an Act.

### *Power to manage the civil service*

#### **39.**

- (1) Anything done under old management functions by-
  - (a) a Minister of the Crown, or
  - (b) any other servant of the Crown under a delegation under section 1 of the Civil Service (Management Functions) Act 1992,is treated as done under subsection (1) or (2) of section 3 of this Act (as the case may be) so far as necessary or appropriate for continuing its effect after the coming into force of section 3.
- (2) Civil servants who, immediately before section 3 comes into force, held their positions in the civil service under or subject to old management functions, continue to hold their positions but under or subject to subsection (1) or (2) of that section (as the case may be).
- (3) The powers in subsections (1) and (2) of section 3 may (in particular) be used to deal with transitional matters.
- (4) Section 1 of this Act applies for the purposes of this paragraph as it applies for the purposes of Chapter 1 of this Part of this Act.

#### **40.**

- (1) So far as-
  - (a) an Order in Council revoked by Part 2 of this Schedule was not made under old management functions, or
  - (b) a relevant transferred function is not an old management function,the subject matter of the Order or function reverts to Her Majesty and may be dealt with (including delegated) by Her accordingly.
- (2) Civil servants who, immediately before this paragraph comes into force, held their positions in the civil service of the State under or subject to-
  - (a) an Order in Council revoked by Part 2 of this Schedule so far as it was not made under old management functions, or
  - (b) a relevant transferred function so far as it is not an old management function,continue to hold their positions but on the basis mentioned in sub-paragraph (1).
- (3) “Relevant transferred function” means a function which-
  - (a) has been delegated by Her Majesty in relation to the management of the civil service of the State (excluding the Northern Ireland Civil Service), and

- (b) has been the subject of a transfer of functions Order (as that term was defined in section 1(5) of the Civil Service (Management Functions) Act 1992 before its repeal by Part 1 of this Schedule).

*Selection on merit etc*

**41.**

- (1) In determining for the purposes of section 10(1) of this Act whether or not a person is a civil servant, ignore any appointment for which the person was selected in reliance on an exception made by the old commission (within the meaning of Part 3 of this Schedule) from a requirement for selection for the appointment to be on merit on the basis of fair and open competition.
- (2) But the recruitment principles (within the meaning of Chapter 1 of this Part of this Act) may disapply sub-paragraph (1) in specified cases.

- 42.** For the purpose of determining whether a selection for an appointment complies with the requirement in section 10(2) of this Act in a case in which the selection process began before section 10(2) comes into force, account must be taken of anything done under or in relation to the selection process before section 10(2) comes into force.

*Special advisers*

**43.**

- (1) This paragraph applies to a person who, immediately before the coming into force of this paragraph, holds a position in the civil service of the State for which the person was selected for appointment in reliance on article 3(2), (4) or (5) of the Civil Service Order in Council 1995.
- (2) For the purposes of Chapter 1 of this Part of this Act the person is treated as a special adviser so long as the person remains in that position on the same terms and conditions.

GENERAL NOTE

This Schedule first appeared in Bill 142, in the same terms. It is introduced by s.19.

It is in four Parts: Acts of parliament; other legislation; civil service commission; and other transitional provisions. The Schedule contains 43 paragraphs.

SCHEDULE 3

Section 26

PARLIAMENTARY STANDARDS ACT 2009:  
SUBSTITUTED SCHEDULE 2

Schedule 2  
COMPLIANCE OFFICER

Section 3

*Appointment of Compliance Officer*

- 1.** (1) The Compliance Officer is to be appointed by the IPSA.  
(2) The person to be appointed must be selected by the IPSA on merit on the basis of fair and open competition.

*Terms and conditions: general*

- 2.** (1) Subject to the provisions of this Schedule, the Compliance Officer holds office in accordance with the terms and conditions of the Compliance Officer's appointment.  
(2) Those terms and conditions are to be determined by the IPSA.

*Term of office*

- 3.** (1) The Compliance Officer is to be appointed for a fixed term not exceeding five years.  
(2) A person who has been appointed as the Compliance Officer may not be appointed again.

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### *Resignation and removal from office*

4. (1) A person may resign from the office of Compliance Officer by giving written notice to the IPSA.
- (2) The IPSA may remove a person from the office of Compliance Officer if the person-
  - (a) is convicted of an offence (see sub-paragraph (3)),
  - (b) becomes bankrupt (see sub-paragraph (4)), or
  - (c) is unfit or unable to carry out the functions of the office.
- (3) For the purposes of determining if the person is convicted of an offence-
  - (a) it does not matter where the person is convicted, and
  - (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).
- (4) A person becomes bankrupt if-
  - (a) in England and Wales or Northern Ireland, a bankruptcy order is made in relation to the person, or
  - (b) in Scotland, the person's estate is sequestrated.

### *Remuneration*

5. (1) The terms and conditions on which a person is appointed as the Compliance Officer may provide for the IPSA-
  - (a) to pay remuneration and allowances to the person;
  - (b) to make provision for a pension in relation to that person.
- (2) The IPSA must make the payment or provision accordingly.

### *Status*

6. (1) The Compliance Officer 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 Compliance Officer's property is not to be regarded as property of, or property held on behalf of, the Crown.

### *Funding*

7. (1) The IPSA must provide the Compliance Officer with adequate resources for the Compliance Officer's functions.
- (2) In particular, the IPSA is responsible for providing staff to assist in the carrying out of those functions.

### *Annual report*

8. (1) As soon as practicable after the end of each financial year, the Compliance Officer must-
  - (a) prepare a report about the performance of the Compliance Officer's functions during that financial year, and
  - (b) send the report to the IPSA.
- (2) The IPSA must send the report to the Speaker of the House of Commons, who must lay it before each House of Parliament.
- (3) When the Speaker lays the report, the Compliance Officer must publish it in such manner as the Compliance Officer considers appropriate.
- (4) "Financial year" means-
  - (a) the period beginning with the day on which a Compliance Officer is first appointed and ending with the next following 31 March, and
  - (b) each successive period of 12 months.

### *Vacancy in office of Compliance Officer*

9. (1) This paragraph applies if the office of Compliance Officer is vacant.
- (2) The IPSA may authorise a member of the IPSA's staff provided under paragraph 7(2) to carry out the functions of the Compliance Officer during the vacancy.
- (3) In relation to a vacancy of more than six months, the functions of the Compliance Officer may not be carried out by virtue of sub-paragraph (2) after the first six months.

### *Disqualification*

10. (1) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) at the appropriate place insert-  
"Compliance Officer for the Independent Parliamentary Standards Authority."

- (2) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) at the appropriate place insert-  
 ““Compliance Officer for the Independent Parliamentary Standards Authority.”

### *Freedom of Information*

11. In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices which are public authorities) at the appropriate place insert-  
 ““Compliance Officer for the Independent Parliamentary Standards Authority.”

### *Public records*

12. In Schedule 1 to the Public Records Act 1958 (definition of public records) at the appropriate place in Part 2 of the Table at the end of paragraph 3 insert-  
 ““Compliance Officer for the Independent Parliamentary Standards Authority.””

### GENERAL NOTE

This Schedule first appeared in Bill 68, in the same terms. It is introduced by s.26(2).

It deals with the new post of compliance officer. Paragraph 1 indicates that the IPSA appoints the compliance officer. The Schedule contains 12 paragraphs.

## SCHEDULE 4

## Section 34

# PARLIAMENTARY STANDARDS ACT 2009: NEW SCHEDULE 4

## Schedule 4 ENFORCEMENT

## Section 9B

### PART I

### RECOVERY OF OVERPAYMENTS

#### *Power to give repayment direction*

1. (1) This paragraph applies where the Compliance Officer-
  - (a) has conducted an investigation in respect of a member of the House of Commons under section 9, and
  - (b) has made findings under section 9(5) that the member was paid an amount under the MPs’ allowances scheme (the “overpayment”) that-
    - (i) should not have been allowed, and
    - (ii) has not been repaid.
- (2) The Compliance Officer-
  - (a) if sub-paragraph (3) applies, may give the member a direction under this paragraph (a “repayment direction”), and
  - (b) otherwise, must give the member a repayment direction.
- (3) This sub-paragraph applies if the Compliance Officer has made findings under section 9(5) that the member’s being paid an amount under the MPs’ allowances scheme that should not have been allowed was wholly or partly the IPSA’s fault.
- (4) A repayment direction must require the member to pay to the IPSA-
  - (a) if sub-paragraph (3) applies, such amount (not exceeding the amount of the overpayment) as the Compliance Officer considers reasonable, and
  - (b) otherwise, the amount of the overpayment.
- (5) The repayment direction must specify the period (the “repayment period”) before the end of which that amount is to be paid.
- (6) A repayment direction may also require the member to do one or both of the following before the end of the repayment period-
  - (a) pay to the IPSA interest on the amount mentioned in sub-paragraph (4), at the rate and in relation to the period specified in the direction;

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- (b) pay to the IPSA an amount reasonably representing the costs incurred by the IPSA in relation to the overpayment, including the costs of the Compliance Officer in conducting the investigation.
- (7) The Compliance Officer must send a copy of the repayment direction to the IPSA.
- (8) References in this Part of this Schedule to a member of the House of Commons include a former member of that House.
- (9) In this Schedule “overpayment”, “repayment direction” and “repayment period” have the meaning given by this paragraph (but in relation to the repayment period, see further paragraph 4(3)).

### *Guidance etc*

- 2. (1) The IPSA must prepare guidance about the circumstances in which the Compliance Officer should include in a repayment direction a requirement under paragraph 1(6)(a) or (b).
- (2) The guidance must include guidance about whether the Compliance Officer should include such a requirement if paragraph 1(3) applies.
- (3) The amount mentioned in paragraph 1(6)(b) is to be calculated by the Compliance Officer in accordance with a scheme prepared by the IPSA for that purpose.
- (4) Before preparing guidance under sub-paragraph (1) or a scheme under sub-paragraph (3) the IPSA must consult the persons listed in section 9A(6).

### *Appeal against repayment direction*

- 3. (1) A member who has been given a repayment direction under paragraph 1 may appeal to the First-tier Tribunal against-
  - (a) the Compliance Officer’s findings under section 9(5);
  - (b) if paragraph 1(3) applies, the Compliance Officer’s decision to give the member a repayment direction;
  - (c) if paragraph 1(3) applies, the amount the member is required to repay because of paragraph 1(4)(a);
  - (d) a requirement contained in the repayment direction because of paragraph 1(6).
- (2) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day on which the repayment direction is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).
- (3) An appeal under this paragraph is by way of a rehearing.
- (4) On an appeal under this paragraph the Tribunal may-
  - (a) allow the appeal in whole or in part, or
  - (b) dismiss the appeal.
- (5) If the Tribunal allows the appeal (in whole or in part) it may-
  - (a) revoke the repayment direction;
  - (b) revoke or vary any requirement contained in the repayment direction;
  - (c) make any other order it thinks fit.
- (6) If the Tribunal dismisses the appeal it may make any other order it thinks fit.
- (7) The Compliance Officer must notify the IPSA of the Tribunal’s decision (and the result of any further appeal).

### *Extension of repayment period*

- 4. (1) The member may at any time before the end of the repayment period make an application to the Compliance Officer for the Compliance Officer to extend (or further extend) the repayment period.
- (2) The Compliance Officer must notify the IPSA of any decision by the Compliance Officer to extend (or further extend) the repayment period.
- (3) If the Compliance Officer extends (or further extends) the repayment period, references in this Schedule to the repayment period are to that period as extended (or further extended) by the Compliance Officer.
- (4) The member may appeal to the First-tier Tribunal against the Compliance Officer’s decision on an application under this paragraph.
- (5) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day on which notice of the decision is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).
- (6) The appeal is by way of a rehearing.
- (7) The Tribunal may-
  - (a) allow the appeal in whole or in part, or
  - (b) dismiss the appeal.
- (8) If the Tribunal allows the appeal (in whole or in part) it may-
  - (a) revoke or vary the Compliance Officer’s decision;

- (b) make any other order it thinks fit.
- (9) If the Tribunal dismisses the appeal it may make any other order it thinks fit.
- (10) The Compliance Officer must notify the IPSA of the Tribunal's decision (and the result of any further appeal).

### *Enforcement of repayment direction*

- 5. (1) This paragraph applies to any amount which a member is required by a repayment direction to pay to the IPSA, but only when-
  - (a) it is no longer possible for there to be a relevant appeal, and
  - (b) all relevant appeals have been withdrawn or determined.
- (2) A relevant appeal is-
  - (a) an appeal under paragraph 3 brought before the end of the period mentioned in paragraph 3(2), or
  - (b) a further appeal in relation to the repayment direction which-
    - (i) is brought before the end of the usual period for bringing such an appeal, and
    - (ii) is an appeal against the determination of an appeal which was itself a relevant appeal.
- (3) The IPSA may recover the amount by making deductions from-
  - (a) any salary payable to the member under section 4;
  - (b) any allowances payable to the member under the MPs' allowances scheme.
- (4) In England and Wales and Northern Ireland the amount is recoverable, if a county court so orders on the application of the Compliance Officer, as if it were payable under an order of that court.
- (5) In Scotland the amount is recoverable as if the repayment direction were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

## PART 2

### PENALTIES

### *Power to impose penalties*

- 6. (1) If sub-paragraph (3) or (4) applies to a member of the House of Commons, the Compliance Officer may by notice (a "penalty notice") impose a penalty on the member.
  - (2) A "penalty" means a sum of money payable by the member to the IPSA.
  - (3) This sub-paragraph applies if the Compliance Officer has made a finding under section 9(5) that the member has without reasonable excuse failed to comply with a requirement under section 9(3) (provision of information to Compliance Officer).
  - (4) This sub-paragraph applies if the Compliance Officer is satisfied that the member has without reasonable excuse failed to comply with any requirement contained in a repayment direction.
  - (5) The Compliance Officer must send a copy of the penalty notice to the IPSA.
  - (6) References in this Part of this Schedule to a member of the House of Commons include a former member of that House.
  - (7) In this Schedule "penalty notice" and "penalty" have the meanings given by this paragraph.

### *Amount of penalty*

- 7. (1) The penalty notice must state the amount of the penalty.
  - (2) The amount of the penalty must not exceed £1,000.
  - (3) The amount in sub-paragraph (2) may be increased (or further increased) by an order made by a Minister of the Crown.
  - (4) An order under sub-paragraph (3) is to be made by statutory instrument.
  - (5) A statutory instrument containing an order under sub-paragraph (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

### *Information to be contained in notice*

- 8. (1) The penalty notice must (as well as stating the amount of the penalty) include information as to-
  - (a) the reasons for imposing the penalty,
  - (b) the period before the end of which the penalty is to be paid,

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- (c) how the penalty may be paid,
  - (d) the procedure and time limit for appealing,
  - (e) the effect of paragraph 12, and
  - (f) any other matter specified by the IPSA.
- (2) Before specifying a matter the IPSA must consult the persons listed in section 9A(6).

### *Guidance etc*

9. (1) The IPSA must prepare guidance about-
- (a) the circumstances in which the Compliance Officer should impose a penalty under paragraph 6, and
  - (b) how the Compliance Officer should determine the amount of the penalty.
- (2) Before preparing the guidance the IPSA must consult the persons listed in section 9A(6).

### *Review of penalty*

10. (1) The Compliance Officer may at any time review a decision to impose a penalty on a member under paragraph 6.
- (2) Following the review the Compliance Officer may cancel the penalty or reduce the amount of the penalty.
  - (3) If the Compliance Office does either of those things, the Compliance Officer must notify the IPSA.
  - (4) If the penalty (or part of the penalty) has already been paid the IPSA must repay the member accordingly.

### *Appeal against penalty*

11. (1) A member on whom a penalty has been imposed under paragraph 6 may appeal to the First-tier Tribunal.
- (2) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day on which the penalty notice is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).
  - (3) The appeal is by way of a rehearing.
  - (4) On an appeal under this paragraph the Tribunal may-
    - (a) allow the appeal and cancel the penalty,
    - (b) allow the appeal and reduce the penalty, or
    - (c) dismiss the appeal.
  - (5) The Compliance Officer must notify the IPSA of the Tribunal's decision (and the result of any further appeal).

### *Enforcement of penalty*

12. (1) This paragraph applies to the amount of a penalty imposed on a member under paragraph 6, but only when-
- (a) it is no longer possible for there to be a relevant appeal, and
  - (b) all relevant appeals have been withdrawn or determined.
- (2) A relevant appeal is-
- (a) an appeal under paragraph 11 brought before the end of the period mentioned in paragraph 11(2), or
  - (b) a further appeal in relation to the penalty notice which-
    - (i) is brought before the end of the usual period for bringing such an appeal, and
    - (ii) is an appeal against the determination of an appeal which was itself a relevant appeal.
- (3) The IPSA may recover the amount by making deductions from-
- (a) any salary payable to the member under section 4;
  - (b) any allowances payable to the member under the MPs' allowances scheme.
- (4) In England and Wales and Northern Ireland the amount is recoverable, if a county court so orders on the application of the Compliance Officer, as if it were payable under an order of that court.
- (5) In Scotland the amount is recoverable as if the penalty notice were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

### *Payment of penalty into Consolidated Fund*

13. The IPSA must pay into the Consolidated Fund-
- (a) the amount of any penalty paid to the IPSA, and

- (b) where the IPSA makes a deduction under paragraph 12(3), an amount corresponding to the amount of the deduction.”

#### GENERAL NOTE

This Schedule first appeared in Bill 68, in the same terms. It is introduced by s.34(2). It is in two Parts: recovery of overpayments; and penalties. The Schedule contains 13 paragraphs.

### SCHEDULE 5

Section 38

## PARLIAMENTARY STANDARDS: CONSEQUENTIAL AMENDMENTS

### PART I

#### AMENDMENTS OF THE PARLIAMENTARY STANDARDS ACT 2009

1. The Parliamentary Standards Act 2009 is amended as follows.
2. In section 2(2) (effect of Act on House of Lords)-
  - (a) omit paragraph (a), and
  - (b) in paragraph (c) for “paragraphs 4(2) and 8(1)” substitute “paragraph 8(2)”.
3. In section 5(8) (allowances) for the words from “and” to the end substitute “and in relation to any such allowances, references in this Act to a member of the House of Commons include a former member of that House.”
4.
  - (1) Section 12 (interpretation) is amended as follows.
  - (2) In subsection (1)-
    - (a) for ““the Commissioner”” substitute ““the Compliance Officer””, and
    - (b) omit the definition of “the MPs’ code of conduct relating to financial interests”.
  - (3) In subsection (2)-
    - (a) after “committee” (in each place) insert “or officer”, and
    - (b) in paragraph (a) for “its” substitute “the”.
5.
  - (1) Section 13 (transitional provision) is amended as follows.
  - (2) Omit subsection (2)(b) and (c).
  - (3) In subsection (4) and (6)(c) for “Commissioner” substitute “Compliance Officer”.
6. In section 14 (commencement) omit subsection (2)(d).
7.
  - (1) Schedule 1 (the IPSA) is amended as follows.
  - (2) Omit paragraph 10 and the heading above it.
  - (3) In paragraph 18(1)-
    - (a) for paragraph (a) substitute-
 

“(a) section 4 (MPs’ salaries), so far as relating to the payment (but not the determination) of salaries,”
    - (b) in paragraph (c), after “claims” insert “(except as mentioned in sub-paragraph (2) below)”, and
    - (c) omit the words following paragraph (c).
  - (4) In paragraph 18(2)-
    - (a) before paragraph (a) insert-
 

“(za) sections 4 and 4A (MPs’ salaries) (except as mentioned in sub-paragraph (1) above),”
    - (b) after paragraph (a) insert-
 

“(aa) section 6(10) (determining procedures for publication of allowances claims),”

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- (c) omit paragraph (b) (and the “and” following it), and
- (d) for paragraph (c) substitute-
  - “(c) section 9(8)(b) and (9) (determining conditions),
  - (d) section 9A (determining procedures for investigations etc),
  - (e) paragraphs 1, 2(2), 4(2) and 9(2) of Schedule 2 (appointment and removal of Compliance Officer etc), and
  - (f) paragraphs 2, 8 and 9 of Schedule 4 (scheme, guidance etc for Compliance Officer).”
- (5) In paragraph 22(8) for “Any repayments” substitute “Any payments received by the IPSA as a result of a repayment direction under Schedule 4, and any repayments otherwise”.

PART 2

AMENDMENTS OF OTHER ACTS

*European Parliament (Pay and Pensions) Act 1979 (c. 50)*

- 8. (1) In section 1(2) (salaries of MEPs) for paragraphs (a) and (b) substitute “the same as that of the salary payable for that period, under section 4 of the Parliamentary Standards Act 2009, to a Member who does not hold an office or position specified in a resolution of the House of Commons for the purposes of section 4A(2) of that Act (higher salaries for holders of specified offices or positions).”
- (2) Omit section 5 (salary to be used for calculating pension benefits).
- (3) In section 8(1) (interpretation) omit the definition of ““a Member’s ordinary salary” and “a Member’s pensionable salary””.

*Parliamentary and other Pensions Act 1987 (c. 45)*

- 9. In section 5(2) (interpretation) for the words from “such resolutions” to the end substitute-
  - “(a) section 4 of the Parliamentary Standards Act 2009, or
  - (b) in relation to a time before that section was in force, the resolutions of the House of Commons then in force relating to the remuneration of its members.”

*Ministerial and other Pensions and Salaries Act 1991 (c. 5)*

- 10. In section 4 (grants to persons ceasing to hold ministerial and other offices)-
  - (a) omit subsection (3),
  - (b) after that subsection insert-
    - “(3A) The annual amount of the salary paid to a person in respect of the office of Chairman of Ways and Means or Deputy Chairman of Ways and Means is the difference between-
      - (a) the annual amount of the salary payable under section 4 of the Parliamentary Standards Act 2009 to a person holding that office, and
      - (b) the annual amount of the salary payable under that section to a member of the House of Commons who does not hold an office or position specified in a resolution of that House for the purposes of section 4A(2) of that Act (higher salaries for holders of specified offices or positions).”, and
  - (c) omit subsection (7).

*Scotland Act 1998 (c. 46)*

- 11. (1) Section 82 (limits on salaries of MSPs) is amended as follows.
- (2) In subsection (1)-
  - (a) before paragraph (a) insert-
    - “(za) under section 4 of the Parliamentary Standards Act 2009 (salaries of members of the House of Commons),” and
  - (b) in paragraph (a) for “either House of Parliament” substitute “the House of Lords”.
- (3) In subsection (2)(b) for “(1)(a)” substitute “(1)(za), (a)”.

*Government of Wales Act 2006 (c. 32)*

- 12. (1) Section 21 (limits on salaries of Assembly members) is amended as follows.
- (2) In subsection (1)-
  - (a) before paragraph (a) insert-

- “(za) under section 4 of the Parliamentary Standards Act 2009 (salaries of members of the House of Commons),” and
- (b) in paragraph (a) for “either House of Parliament” substitute “the House of Lords”.
- (3) In subsection (2)(b) for “(l)(a)” substitute “(l)(za), (a)”.

#### GENERAL NOTE

This Schedule first appeared in Bill 68, in the same terms. It is introduced by s.38.

It is in two Parts: amendments of the PSA 2009; and amendments of other Acts. The Schedule contains 12 paragraphs.

### SCHEDULE 6

### Section 40

## PARLIAMENTARY AND OTHER PENSIONS

### PART I

#### PARLIAMENTARY AND OTHER PENSIONS

### **The Parliamentary Contributory Pension Fund etc**

#### *Continuance of Fund*

1. There is to continue to be a fund known as the Parliamentary Contributory Pension Fund (“the Fund”).

#### *Number and composition of trustees*

2. (1) The following are to be the trustees of the Fund-
- (a) one person appointed by the IPSA after consulting the Minister for the Civil Service and the persons who are already trustees of the Fund,
  - (b) one person appointed by the Minister for the Civil Service after consulting the IPSA and the persons who are already trustees of the Fund, and
  - (c) 8 persons nominated and selected in accordance with arrangements under paragraph 3 (“member-nominated trustees”).
- (2) Paragraphs 49 and 50 make transitional provision about the trustees of the Fund.

#### *Member-nominated trustees*

3. (1) The trustees of the Fund must make arrangements for the nomination and selection of member-nominated trustees.
- (2) The arrangements must provide for the member-nominated trustees to be-
- (a) nominated as the result of a process in which all the members of a scheme under paragraph 12 and all the members of a scheme under paragraph 16 are eligible to participate, and
  - (b) selected as the result of a process in which some or all of those persons are eligible to participate.
- (3) The arrangements must-
- (a) include provision for the nomination and selection process to take place within a reasonable period of any vacancy arising,
  - (b) include provision, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled, and
  - (c) include provision that, where the IPSA or the Minister for the Civil Service so requires, a person who is not a member of a scheme under paragraph 12 and is not a member of a scheme under paragraph 16 must have the approval of the IPSA or the Minister for the Civil Service to qualify for selection as a member-nominated trustee.
- (4) The arrangements may include provision that where the number of nominations received is equal to or less than the number of vacancies, the nominees are to be treated as selected (subject to sub-paragraph (3)(c)).

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### *Remuneration*

4. (1) The IPSA may, with the consent of the Treasury, provide for remuneration and allowances to be payable to the trustees of the Fund.
- (2) Any such remuneration and allowances are to be paid from the assets of the Fund.

### *Resignation and removal of trustees*

5. (1) A person appointed as a trustee of the Fund by the IPSA under paragraph 2(1)(a)-
  - (a) may resign by giving written notice to the IPSA, and
  - (b) may be removed by the IPSA after consulting the Minister for the Civil Service and all the other trustees of the Fund.
- (2) A person appointed as a trustee of the Fund by the Minister for the Civil Service under paragraph 2(1)(b)-
  - (a) may resign by giving written notice to the Minister for the Civil Service, and
  - (b) may be removed by the Minister for the Civil Service after consulting the IPSA and all the other trustees of the Fund.
- (3) A person who is a member-nominated trustee-
  - (a) may resign by giving written notice to the other trustees of the Fund, and
  - (b) may be removed by all the other trustees of the Fund acting together.

### *Proceedings*

6. (1) Subject to any provisions contained in a scheme under paragraph 8 because of paragraph 8(1)(d), the trustees of the Fund may determine their own procedure.
- (2) The validity of any proceedings of the trustees of the Fund is not affected by-
  - (a) a vacancy among the trustees, or
  - (b) a defect in the appointment of a trustee.

### *Powers of trustees*

7. (1) The trustees of the Fund may invest the assets of the Fund, whether at the time in a state of investment or not, in any investment whatever and may also from time to time vary any such investments.
- (2) The trustees of the Fund may settle or compromise any claim or dispute relating to the Fund, but-
  - (a) so far as the claim or dispute relates to a scheme under paragraph 8 or 12, they may do so only with the consent of the IPSA, and
  - (b) so far as the claim or dispute relates to a scheme under paragraph 16, they may do so only with the consent of the Minister for the Civil Service.
- (3) The IPSA must consult the Minister for the Civil Service before giving its consent to the settlement or compromise of a claim or dispute relating to a scheme under paragraph 8.
- (4) Section 35(1) to (4) of the Pensions Act 1995 (pension scheme trustees must prepare statement of investment principles) applies to the trustees of the Fund despite any provision in regulations under section 35 of that Act which would (apart from this sub-paragraph) prevent it applying.
- (5) Any provision in regulations under that section which would require the trustees of the Fund to consult the employer applies as if it required them to consult the IPSA and the Minister for the Civil Service.

### *Administration scheme*

8. (1) The IPSA may make a scheme containing provision about-
  - (a) the administration of the Fund,
  - (b) the management of the Fund's assets,
  - (c) the indemnification of the trustees (and former trustees) of the Fund,
  - (d) the proceedings of the trustees of the Fund, and
  - (e) the application of the Fund's assets in connection with the matters in paragraphs (a) to (d).
- (2) A scheme under this paragraph may in particular-
  - (a) include any or all of the provisions specified in paragraphs 31 to 33,
  - (b) make different provision in relation to different cases, circumstances or persons,
  - (c) make such incidental, consequential and transitional provision (other than provision modifying an enactment or subordinate legislation) as the IPSA considers appropriate.
- (3) In sub-paragraph (2)(c) the reference to subordinate legislation does not include a scheme under this paragraph.
- (4) No provision of a scheme under this paragraph is to be construed as restricting the powers of the trustees under paragraph 7(1).

*Procedure for administration scheme*

9. (1) The IPSA may make a scheme under paragraph 8 only with the consent of the trustees of the Fund.
- (2) Before making a scheme under paragraph 8 the IPSA must consult-
- (a) the Treasury,
  - (b) the Minister for the Civil Service,
  - (c) persons the IPSA considers to represent those likely to be affected by the scheme, and
  - (d) any other person the IPSA considers appropriate.
- (3) The IPSA must send to the Speaker of the House of Commons for laying before the House of Commons-
- (a) any scheme made by it under paragraph 8, and
  - (b) a statement of the reasons for making the scheme.
- (4) When the scheme and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.

*Exchequer contribution to Fund*

10. (1) In respect of each financial year an Exchequer contribution is to be paid into the Fund out of money provided by Parliament.
- (2) Subject to any provision made by the IPSA under paragraph 11, the amount of the contribution for any financial year is to be calculated in accordance with recommendations for that year contained in a report made by the Government Actuary under this paragraph.
- (3) The Government Actuary must make a report under this paragraph as soon as practicable after the beginning of-
- (a) the period of three years beginning with the relevant date, and
  - (b) each succeeding period of three years.
- (4) The “relevant date” means the date immediately following the end of the three year period which is current for the purposes of section 3 of the Parliamentary and other Pensions Act 1987 when this paragraph comes into force.
- (5) The report is to be made to-
- (a) the trustees of the Fund,
  - (b) the IPSA,
  - (c) the Minister for the Civil Service, and
  - (d) the Treasury.
- (6) The report must-
- (a) report on the general financial position of the Fund at the beginning of the period of three years in which the report is made, and
  - (b) make a recommendation as to the rate at which (subject to any subsequent report under this paragraph) Exchequer contributions should be paid into the Fund in respect of any financial year beginning after the report is made.
- (7) The rate is to be expressed by reference to such matters as the Government Actuary considers appropriate.
- (8) A copy of every report made by the Government Actuary under this paragraph is to be laid before the House of Commons.

*Power to determine Exchequer contribution*

11. (1) The IPSA may, with the relevant consents, make provision for determining the Exchequer contribution in respect of any financial year.
- (2) The “relevant consents” means-
- (a) if the result of making the provision is that the amount of the Exchequer contribution in respect of any financial year is less than it otherwise would be, the consent of the Treasury, the Minister for the Civil Service and the trustees of the Fund, and
  - (b) otherwise, the consent of the Treasury and the Minister for the Civil Service.
- (3) The “Exchequer contribution” means the amount to be paid into the Fund under paragraph 10.
- (4) Before making provision under this paragraph the IPSA must consult-
- (a) (if sub-paragraph (2)(a) does not apply) the trustees of the Fund,
  - (b) the Government Actuary, and
  - (c) persons appearing to the IPSA to represent persons likely to be affected by the provision.
- (5) The IPSA must send to the Speaker of the House of Commons for laying before the House of Commons-
- (a) any representations made by the trustees of the Fund in response to consultation under this paragraph,

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- (b) any provision made by the IPSA under this paragraph, and
- (c) a statement of the reasons for making the provision.
- (6) When the provision and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.
- (7) Provision under this paragraph may-
  - (a) apply to a financial year which has already ended or which has begun before the making of the provision, and
  - (b) make such incidental, consequential and transitional provision (other than provision modifying an enactment or subordinate legislation) as the IPSA considers appropriate.

### **MPs' pension scheme**

#### *MPs' pension scheme*

12. (1) The IPSA may make a scheme containing provision about the application of the assets of the Fund in or towards the provision of pensions for or in respect of persons with service as a member of the House of Commons, in respect of that service.
- (2) A scheme under this paragraph may not provide for the application of any of the assets of the Fund in or towards the provision of pensions for or in respect of persons with service as Lord Chancellor.
  - (3) A scheme under this paragraph may not provide for the application of any of the assets of the Fund in or towards the provision of pensions for or in respect of a person ("P") with service as-
    - (a) Prime Minister and First Lord of the Treasury, or
    - (b) Speaker of the House of Commons.
  - (4) Sub-paragraph (3) does not apply if P elects, in accordance with provision made by the scheme, to contribute to the Fund out of P's salary as a member of the House of Commons while holding the office of Prime Minister and First Lord of the Treasury or Speaker of the House of Commons.
  - (5) The provision mentioned in sub-paragraph (4) may not provide for a pension payable under the scheme for or in respect of P to be calculated by reference to service as a member of the House of Commons before 28 February 1991.

#### *Meaning of "service as a member of the House of Commons"*

13. (1) For the purposes of this Schedule a person is to be treated as in service as a member of the House of Commons at any time if at that time a salary is or was payable to the person under-
- (a) section 4 of the Parliamentary Standards Act 2009, or
  - (b) in relation to a time before that section was in force, the resolutions of the House of Commons then in force relating to the remuneration of its members.
- (2) For the purposes of this Schedule service as a member of the House of Commons includes service as the holder of a qualifying office or position.
- (3) In relation to a time when a determination under section 4(4) of the Parliamentary Standards Act 2009 is in effect a "qualifying office or position" means an office or position in respect of which, because of section 4A(2) of that Act, a higher salary is payable than the salary payable to members of the House of Commons generally.
- (4) In relation to a time before the first determination under section 4(4) of the Parliamentary Standards Act 2009 comes into effect a "qualifying office or position" means-
- (a) the office of Chairman of Ways and Means and the office of Deputy Chairman of Ways and Means,
  - (b) an office or position in respect of which, under the resolutions of the House of Commons then in force relating to the remuneration of its members, a higher salary was payable than the salary payable to members of the House of Commons generally.

#### *MPs' pension scheme: further provision*

14. (1) A scheme under paragraph 12 may in particular-
- (a) include any or all of the provisions specified in paragraphs 24 to 32, except for-
    - (i) the provision specified in paragraph 26(1), unless with the consent of the trustees of the Fund,
    - (ii) the provision specified in paragraph 31, unless with the consent of the trustees of the Fund, and
    - (iii) the provision specified in paragraph 29(2),

- (b) make provision which has effect from a date earlier than the date the scheme is made,
  - (c) make provision in relation to service before the passing of this Act,
  - (d) make different provision in relation to different cases, circumstances or persons, and
  - (e) make such incidental, consequential and transitional provision (other than provision modifying an enactment or subordinate legislation) as the IPSA considers appropriate.
- (1) In sub-paragraph (1)(e) the reference to subordinate legislation does not include a scheme under paragraph 12.

### *Procedure for MPs' pension scheme*

15. (1) Before making a scheme under paragraph 12 the IPSA must consult-
- (a) the Treasury,
  - (b) the Minister for the Civil Service,
  - (c) the trustees of the Fund,
  - (d) persons the IPSA considers to represent those likely to be affected by the scheme,
  - (e) the Government Actuary,
  - (f) the Review Body on Senior Salaries, and
  - (g) any other person the IPSA considers appropriate.
- (2) The IPSA must send to the Speaker of the House of Commons for laying before the House of Commons-
- (a) any representations made to it by the trustees of the Fund in response to consultation under this paragraph,
  - (b) any scheme made by it under paragraph 12, and
  - (c) a statement of the reasons for making the scheme.
- (3) When the scheme and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.
- (4) The reference in sub-paragraph (1)(f) to the Review Body on Senior Salaries-
- (a) if the name of the body is changed, is to be treated as a reference to the body by its new name, and
  - (b) if the functions of the body (or substantially corresponding functions) become functions of a different body, is to be treated as a reference to the body by which those functions are exercisable.
- (5) Any question arising under sub-paragraph (4) is to be determined by the Speaker of the House of Commons.

## **Ministers' etc pension scheme**

### *Ministers' etc pension scheme*

16. (1) The Minister for the Civil Service may make a scheme containing provision about the application of the assets of the Fund in or towards the provision of pensions for or in respect of persons with service to which this paragraph applies, in respect of that service.
- (2) This paragraph applies to service as-
- (a) the holder of an office specified in Parts 1 to 4 of Schedule 1 to the Ministerial and other Salaries Act 1975 (ministerial offices),
  - (b) the holder of an office specified in Part 1 of Schedule 2 to that Act (Opposition leaders and whips),
  - (c) Speaker of the House of Lords,
  - (d) Chairman of Committees of the House of Lords,
  - (e) Deputy Chairman of Committees of the House of Lords.
- (3) A scheme under this paragraph may not provide for the application of any of the assets of the Fund in or towards the provision of pensions for or in respect of a person with service as-
- (a) Lord Chancellor,
  - (b) Prime Minister and First Lord of the Treasury, or
  - (c) Speaker of the House of Commons.

### *Ministers' etc pension scheme: further provision*

17. (1) A scheme under paragraph 16 may in particular-
- (a) include any or all of the provisions specified in paragraphs 24 to 32 and 34, except the provisions specified in paragraphs 26(1) and 31 unless with the consent of the trustees of the Fund,

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- (b) make provision which has effect from a date earlier than the date the scheme is made,
  - (c) make provision in relation to service before the passing of this Act (including, in relation to service within paragraph 16(2)(a) or (b), service before the passing of the Ministerial and other Salaries Act 1975),
  - (d) make different provision in relation to different cases, circumstances or persons, and
  - (e) make such incidental, consequential and transitional provision (other than provision modifying an enactment or subordinate legislation) as the Minister considers appropriate.
- (2) In sub-paragraph (1)(e) the reference to subordinate legislation does not include a scheme under paragraph 16.

### *Procedure for Ministers' etc pension scheme*

18. (1) Before making a scheme under paragraph 16 the Minister for the Civil Service must consult-
- (a) the IPSA,
  - (b) the Government Actuary,
  - (c) the trustees of the Fund, and
  - (d) any other person the Minister considers appropriate.
- (2) The Minister for the Civil Service must lay before each House of Parliament-
- (a) any representations made to the Minister by the trustees of the Fund in response to consultation under this paragraph,
  - (b) any scheme made by the Minister under paragraph 16, and
  - (c) a statement of the reasons for making the scheme.
- (3) When the scheme and the statement of reasons have been laid, the Minister must publish them in a way the Minister considers appropriate.

## **Supplementary provision**

### *Protection of accrued rights*

19. (1) This paragraph applies where-
- (a) the IPSA makes a scheme under paragraph 12, or
  - (b) the Minister for the Civil Service makes a scheme under paragraph 16, (the "new scheme").
- (2) The new scheme must not make any provision in relation to an accrued right which puts (or might put) a person in a worse position than the person would have been in apart from the provision.
- (3) Sub-paragraph (2) does not apply if-
- (a) the trustees of the Fund consent to the new scheme making the provision, and
  - (b) the person making the new scheme is satisfied that the consent requirement is met.
- (4) The consent requirement is met if under the new scheme the provision has effect in relation to an accrued right only with the written consent, given in accordance with sub-paragraph (5), of-
- (a) the person ("P") in respect of whose service the right has accrued, or
  - (b) if P is dead, the persons ("the survivors") who because of the accrued right are entitled, or may become entitled, to a pension or the benefit of any pension.
- (5) Consent is given in accordance with this sub-paragraph if it is given after the person making the scheme has given P (or the survivors)-
- (a) information in writing which adequately explains the nature of the provision and its effect,
  - (b) notice in writing that they may make representations about the provision,
  - (c) an adequate opportunity to make such representations, and
  - (d) notice in writing that the provision has effect in relation to the accrued right only with their written consent.
- (6) Consent may be given by a person acting on behalf of P (or the survivors); and the references in sub-paragraph (5) to P (or the survivors) include a person acting on their behalf.
- (7) In sub-paragraph (4)(a) "service" means-
- (a) where the new scheme is a scheme under paragraph 12, service as a member of the House of Commons, and
  - (b) where the new scheme is a scheme under paragraph 16, service to which that paragraph applies.

*Meaning of “accrued right”*

20. (1) This paragraph applies for the interpretation of paragraph 19.
- (2) “Accrued right”, in relation to a provision of the new scheme, means a right (including a contingent right) or entitlement to or in respect of a pension or future pension payable out of the Fund which has accrued in respect of service before the provision comes into force.
- (3) Where the new scheme is a scheme under paragraph 12, in this paragraph “service” means service as a member of the House of Commons.
- (4) Where the new scheme is a scheme under paragraph 16, in this paragraph “service” means service to which that paragraph applies.

*Power to make consequential amendments*

21. (1) The Minister for the Civil Service may by order make such modifications of any enactment or subordinate legislation (whenever passed or made) as the Minister considers appropriate in consequence of any provision of a scheme made by the IPSA or the Minister for the Civil Service under this Part of this Schedule.
- (2) In sub-paragraph (1) the reference to subordinate legislation does not include a scheme made by the IPSA or the Minister for the Civil Service under this Part of this Schedule.
- (3) An order under this paragraph is to be made by statutory instrument.
- (4) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament (subject to sub-paragraph (5)).
- (5) A statutory instrument containing an order made under this paragraph in consequence only of a scheme under paragraph 12 is subject to annulment in pursuance of a resolution of the House of Commons.

*Interpretation etc*

22. (1) A scheme made by the IPSA under paragraph 8 or 12 may amend or revoke any previous scheme made by the IPSA under that paragraph.
- (2) A scheme made by the Minister for the Civil Service under paragraph 16 may amend or revoke any previous scheme made by the Minister under that paragraph.
- (3) For the purposes of this Schedule “member”-
- (a) in relation to a scheme under paragraph 12, means a person with service as a member of the House of Commons who, in respect of that service, has a right or entitlement under the scheme to a pension or future pension payable out of the Fund, and
- (b) in relation to a scheme under paragraph 16, means a person with service to which that paragraph applies who, in respect of that service, has a right or entitlement under the scheme to a pension or future pension payable out of the Fund.
- (4) In this Part of this Schedule-
- “the Fund” means the Parliamentary Contributory Pension Fund;
- “the IPSA” means the Independent Parliamentary Standards Authority;
- “member-nominated trustee” has the meaning given by paragraph 2;
- “modifications” includes additions, alterations and omissions (and related expressions are to be read accordingly);
- “pension” includes gratuity;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

## PART 2

## PROVISION WHICH MAY BE INCLUDED IN SCHEMES

*Introductory*

23. (1) In this Part of this Schedule “relevant service”-
- (a) for the purposes of paragraph 14(1)(a), means service as a member of the House of Commons, and
- (b) for the purposes of paragraph 17(1)(a), means service to which paragraph 16 applies.
- (2) Expressions defined in relation to Part 1 of this Schedule have the same meaning in this Part of this Schedule as in that Part.

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### *Contributions*

- 24.** Provision authorising or requiring contributions and other sums to be paid into the Fund by or on behalf of persons in relevant service, including provision for those contributions and sums to be paid-
- (a) by deductions from salary;
  - (b) in the case of a person who does not draw a salary, out of money provided by Parliament.

### *Conditions etc*

- 25.** Provision as to-
- (a) the circumstances in which there is to be entitlement to a pension payable out of the Fund;
  - (b) the conditions of any such entitlement;
  - (c) the persons to or for the benefit of whom such a pension is payable;
  - (d) the calculation of the amount of any such pension;
  - (e) the payment or commutation of any such pension.

### *Pensions not paid out of Fund*

- 26.** (1) Provision for the application of assets of the Fund in or towards the provision of pensions to be paid otherwise than out of the Fund.
- (2) In connection with such provision, provision for the payment into the Fund out of money provided by Parliament of sums in addition to those paid into the Fund under paragraph 10.

### *Transfer values*

- 27.** (1) Provision for the payment and receipt of transfer values by the trustees of the Fund (including provision for the payment of such values into the Consolidated Fund).
- (2) Provision for the transfer and receipt by the trustees of the Fund of funds or policies of insurance in lieu of transfer values.

### *Service*

- 28.** Provision authorising service other than relevant service to be taken into account, in addition to relevant service, for the purposes of any provision of the scheme.

### *Repayments*

- 29.** (1) Provision as to the circumstances and manner in which amounts equal to some or all of the contributions and other sums paid by or on behalf of a person into the Fund may be repaid or paid to that person.
- (2) Provision as to the circumstances and manner in which any such amounts are to be paid out of the Consolidated Fund in respect of transfer values paid into that Fund.
- (3) Provision under sub-paragraph (1) or (2) may include provision as to whether any repayment or payment made under that provision is to be made with or without interest.

### *Assignment etc*

- 30.** Provision rendering void-
- (a) any assignment (or, in Scotland, assignation) of a pension which is payable or may become payable out of the Fund;
  - (b) any charge on such a pension;
  - (c) any agreement to assign or charge such a pension.

### *Functions*

- 31.** Provision conferring functions under the scheme on persons specified in or determined under the scheme.

### *Approvals*

- 32.** Provision making the approval, satisfaction or opinion of persons on whom functions are conferred by or under the scheme material for the purposes of any provision of the scheme.

*Payments without probate*

33. Provision authorising (in relation to such cases, circumstances or persons as may be specified in or determined under the scheme) any sum due to be paid out of the Fund in respect of a person who has died to be paid without probate or other proof of title.

*Application of other provisions*

34. Provision which (with or without modifications) applies in relation to a pension payable out of the Fund so much of any enactment or subordinate legislation (whenever passed or made) as relates to another pension, being a pension payable out of money provided by Parliament.

## PART 3

## AMENDMENTS, TRANSITIONAL PROVISION ETC

*Pensions (Increase) Act 1971 (c. 56)*

## 35.

- (1) Part 1 of Schedule 2 is amended as follows.  
 (2) For paragraph 3A substitute-

“3A A pension which, under a scheme under paragraph 12 or 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010, is payable out of the Parliamentary Contributory Pension Fund.”

- (3) In paragraph 3B for “an order” substitute “a scheme”.

*Parliamentary and other Pensions Act 1972 (c. 48)*

## 36.

- (1) Section 27 (pensions for dependants of Prime Minister or Speaker) is amended as follows.  
 (2) In subsection (1)-  
 (a) in paragraph (a) for the words from “in respect” to the end substitute “under a scheme made by the Minister for the Civil Service under paragraph 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010 to receive a pension payable out of the Parliamentary Contributory Pension Fund in respect of service to which that paragraph applies”, and  
 (b) in paragraph (c) for “Treasury” substitute “Minister for the Civil Service”.  
 (3) In subsection (2)-  
 (a) for “the Parliamentary pension scheme” substitute “a scheme made by the Minister for the Civil Service under paragraph 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010”,  
 (b) in paragraph (a) for “as a Member of the House of Commons” substitute “to which that paragraph applies”, and  
 (c) in paragraph (b), for “Leader of the House of Commons” substitute “Minister for the Civil Service”.  
 (4) In subsection (5), omit from ““the Leader” to the end.

## 37.

- (1) The amendments made by paragraph 36 do not apply in relation to a person who, having held office as Prime Minister and First Lord of the Treasury or Speaker of the House of Commons, died before that paragraph comes into force.  
 (2) In relation to such a person section 27 of the Parliamentary and other Pensions Act 1972, and the provisions designated under that section, have effect as if this Act had not been passed.

*European Parliament (Pay and Pensions) Act 1979 (c. 50)*

## 38.

- (1) Section 4 (pensions) is amended as follows.  
 (2) In subsection (1)-  
 (a) for “Leader of the House of Commons may by order make” substitute “IPSA may make a scheme containing”, and  
 (b) for “by the order” substitute “in the scheme”.  
 (3) In subsection (2)-  
 (a) for “orders” substitute “a scheme”, and  
 (b) for “order” substitute “scheme”.

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- (4) In subsection (3)-
  - (a) for “an order” substitute “a scheme”, and
  - (b) in paragraphs (d) and (g) for “order” substitute “scheme”.
- (5) In subsection (3A), for “An order” substitute “A scheme”.
- (6) For subsection (4) substitute-
  - “(4) Before making a scheme under this section the IPSA must consult-
    - (a) the Treasury,
    - (b) the Minister for the Civil Service,
    - (c) persons it considers to represent those likely to be affected by the scheme,
    - (d) the Government Actuary, and
    - (e) any other person it considers appropriate.
  - (4A) The IPSA must send to the Speaker of the House of Commons for laying before both Houses of Parliament-
    - (a) any scheme made by it under this section, and
    - (b) a statement of the reasons for making the scheme.
  - (4B) When the scheme and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.”
- (7) For subsection (5) substitute-
  - “(5) The IPSA must from time to time prepare a report on the operation of any provisions in force under this section, and send it to the Speaker of the House of Commons for laying before both Houses of Parliament.”
- (8) After subsection (7) insert-
  - “(8) A scheme made by the IPSA under this section may amend or revoke any previous scheme made by the IPSA under this section.”

### 39.

- (1) Section 6 (block transfer into another pension scheme) is amended as follows.
- (2) In subsection (1)-
  - (a) for “Leader of the House of Commons may by order” substitute “IPSA may, with the consent of the Treasury and the Minister for the Civil Service”, and
  - (b) for “the order” substitute “the direction”.
- (3) In subsection (2)-
  - (a) for “making an order” substitute “giving a direction”,
  - (b) for “Leader of the House of Commons” substitute “IPSA”,
  - (c) for “he” (in both places) substitute “it”,
  - (d) for “make such an order” substitute “give such a direction”, and
  - (e) for “the order” substitute “the direction”.
- (4) In subsection (4), in the definition of “the relevant pension provisions”-
  - (a) for “an order” substitute “a direction”,
  - (b) for “orders” substitute “a scheme”, and
  - (c) for “order is made” substitute “direction is given”.

### 40.

- (1) Section 7 (expenses and receipts) is amended as follows.
- (2) In subsection (1)(c) (expenses and receipts)-
  - (a) for “any order” substitute “a scheme”, and
  - (b) omit the words from “or of any” to the end.
- (3) In subsection (1)(d) for “an order” substitute “a direction”.

### 41.

- (1) Section 8 is amended as follows.
- (2) In subsection (1) (interpretation)-
  - (a) after the definition of “electoral region” insert-
    - ““the IPSA” means the Independent Parliamentary Standards Authority;”, and
  - (b) omit the definition of “the Leader of the House of Commons”.
- (3) Omit subsection (2).

## *House of Commons Members’ Fund and Parliamentary Pensions Act 1981 (c. 7)*

42. In section 1 (entitlement to payments out of House of Commons Members’ Fund)-
  - (a) in subsection (5)(b) for “paragraph (b), (c) or (d) of section 2(2) of the Parliamentary and other Pensions Act 1987” substitute “subsection (5A)”, and
  - (b) after subsection (5) insert-
    - “(5A) The offices are-
      - (a) the offices mentioned in paragraph 16(2)(a), (b), (d) or (e) of Schedule 6 to the Constitutional Reform and Governance Act 2010;
      - (b) the offices of Chairman of Ways and Means and Deputy Chairman of Ways and Means.”

*Parliamentary and other Pensions Act 1987 (c. 45)***43.** Omit-

- (a) section 1,
- (b) section 2(1) to (8) and (10),
- (c) section 3, and
- (d) Schedule 1.

**44.**

- (1) The existing regulations have effect (subject to any provision in an order under section 51 of this Act)-
  - (a) so far as they relate to matters which could be contained in a scheme made by the IPSA under paragraph 8, as if they were a scheme made by the IPSA under that paragraph,
  - (b) so far as they relate to matters which could be contained in a scheme made by the IPSA under paragraph 12, as if they were a scheme made by the IPSA under that paragraph, and
  - (c) so far as they relate to matters which could be contained in a scheme made by the Minister for the Civil Service under paragraph 16, as if they were a scheme made by the Minister under that paragraph.
- (2) An order under section 51 or 52 of this Act may provide for any provision of the existing regulations which-
  - (a) relates to one or more of the matters listed in paragraph 8(1), but
  - (b) could not be contained in a scheme under paragraph 8,
 to have effect as if contained in a scheme under that paragraph.
- (3) If it does so a scheme under paragraph 8 may-
  - (a) revoke the provision;
  - (b) amend it so that it makes provision which may be contained in a scheme under that paragraph (but not otherwise amend it).
- (4) An order under section 51 or 52 of this Act may provide for any provision of the existing regulations which-
  - (a) relates to service as a member of the House of Commons, but
  - (b) could not be contained in a scheme under paragraph 12,
 to have effect as if contained in a scheme under that paragraph.
- (5) If it does so a scheme under paragraph 12 may-
  - (a) revoke the provision;
  - (b) amend it so that it makes provision which may be contained in a scheme under that paragraph (but not otherwise amend it).
- (6) An order under section 51 or 52 of this Act may provide for any provision of the existing regulations which-
  - (a) relates to service to which paragraph 16 applies, but
  - (b) could not be contained in a scheme under that paragraph,
 to have effect as if contained in a scheme under that paragraph.
- (7) If it does so a scheme under paragraph 16 may-
  - (a) revoke the provision;
  - (b) amend it so that it makes provision which may be contained in a scheme under that paragraph (but not otherwise amend it).
- (8) “The existing regulations” means the regulations under section 2 of the Parliamentary and other Pensions Act 1987 in force immediately before the date specified in an order made by a Minister of the Crown by statutory instrument.
- (9) An order under sub-paragraph (8) may specify different dates for different purposes.

*Ministerial and other Pensions and Salaries Act 1991 (c. 5)***45.** Omit section 6.*Pensions Act 2004 (c. 35)*

- 46.** In section 249A(3)(c) (schemes to which section 249A does not apply) for “section 2 of the Parliamentary and other Pensions Act 1987 (c. 45)” substitute “paragraph 8, 12 or 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010”.

*Parliamentary Standards Act 2009 (c. 13)***47.**

- (1) In section 5(9) (MPs’ allowances scheme does not affect pensions) for “the Parliamentary and other Pensions Act 1987 (c. 45)” substitute “Schedule 6 to the Constitutional Reform and Governance Act 2010”.
- (2) In paragraph 18 of Schedule 1 (IPSA’s administration and regulation functions), after sub-paragraph (2) insert-

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- (3) The IPSA's functions under the following provisions are also regulation functions-
- (a) sections 3, 4 and 6 of the European Parliament (Pay and Pensions) Act 1979 (but not any function relating to the administration of a scheme under section 3 or 4);
  - (b) paragraphs 2 to 5, 8, 9, 11, 12 and 15 of Schedule 6 to the Constitutional Reform and Governance Act 2010 (but not any function relating to the administration of a scheme under paragraph 8 or 12)."
- (3) In paragraph 29(2) of Schedule 1 (interpretation) in the definition of "regulation functions" after "18(2)" insert "and (3)".

### 48.

- (1) An order under section 13 of the Parliamentary Standards Act 2009 may make the provision mentioned in section 13(6) (provision for transfer schemes) in connection with this Schedule (as well as in connection with that Act).
- (2) But for this purpose-
- (a) the reference in section 13(6)(a) to matters dealt with by the rules is to be treated as a reference to matters which could be dealt with by a scheme under paragraph 8 or 12;
  - (b) section 13(6)(b) and (c) does not apply to property, rights and liabilities, or documents and information, held by or on behalf of the trustees of the Fund.
- (3) Section 13(7) of that Act applies to a scheme made by virtue of section 13(6) and this paragraph.

### *Trustees of the Fund*

### 49.

- (1) This paragraph applies if, under an order under section 52, paragraph 2 comes into force for the purpose of making an appointment under paragraph 2(1)(a) or (b) before it comes into force for other purposes.
- (2) The reference in paragraph 2(1)(a) or (b) to the persons who are already trustees of the Fund is to the persons who are trustees of the Fund by virtue of section 1 of the Parliamentary and other Pensions Act 1987.

### 50.

- (1) In this paragraph "the transitional period" means the period of six months beginning with the day on which paragraph 2 comes into force (other than for the purpose of making an appointment under paragraph 2(1)(a) or (b)).
- (2) During the transitional period-
- (a) paragraph 2(1) applies as if for paragraph (c) there were substituted-  
" (c) the persons who (by virtue of section 1 of the Parliamentary and other Pensions Act 1987) are the trustees of the Fund immediately before the beginning of the transitional period.", and
  - (b) paragraph 5 applies to persons who are trustees of the Fund because of paragraph (a) as if they were member-nominated trustees.
- (3) But if a person who is a trustee of the Fund immediately before the beginning of the transitional period is appointed under paragraph 2(1)(a) or (b) that person is not to be treated as being a trustee of the Fund because of sub-paragraph (2)(a).
- (4) The trustees of the Fund must make arrangements (the "transitional arrangements") for 8 persons to be nominated and selected as member-nominated trustees before the end of the transitional period.
- (5) Those persons become member-nominated trustees immediately after the end of the transitional period.
- (6) Only persons who are trustees of the Fund immediately before the beginning of the transitional period may be nominated and selected as member-nominated trustees under the transitional arrangements.
- (7) But if it is not possible to secure 8 member-nominated trustees from among those persons, the deficiency may be supplied by other persons.
- (8) At the end of the transitional period any persons who-
- (a) immediately before the end of that period, are trustees of the Fund because of sub-paragraph (2)(a), but
  - (b) have not been nominated and selected as member-nominated trustees,
- cease to be trustees of the Fund.

### GENERAL NOTE

This Schedule first appeared in Bill 68. It reappeared in HL Bill 40. It is introduced by s.40.

It is in three parts: parliamentary and other pensions; provisions which may be included in schemes; and amendments, transitional provisions, etc. It comprises 50 paragraphs.

## AMENDMENTS OF FREEDOM OF INFORMATION ACT 2000

1. The Freedom of Information Act 2000 is amended as follows.
2. In section 2(3) (exemptions not subject to public interest test) after paragraph (e) insert—

“(ea) in section 37, paragraphs (a) to (ab) of subsection (1), and subsection (2) so far as relating to those paragraphs.”.
3. In section 37(1) (communications with Her Majesty, etc.), for paragraph (a) substitute—
  - (a) communications with the Sovereign,
  - (aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,
  - (ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,
  - (ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and
  - (ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs), or”.
4.
  - (1) Section 62 (interpretation of Part 6) is amended as follows.
  - (2) In subsection (1) (meaning of “historical record”), for “thirty years” substitute “twenty years”.
  - (3) After subsection (2) insert—

“(2A) Until the end of the period of 10 years beginning with the commencement of paragraph 4 of Schedule 7 to the Constitutional Reform and Governance Act 2010, subsection (1) has effect subject to any order made under section 46(2) of that Act.”
5.
  - (1) Section 63 (removal of exemptions: historical records generally) is amended as follows.
  - (2) In subsection (1)—
    - (a) omit “28,” and
    - (b) for “36, 37(1)(a), 42 or 43” substitute “or 42”.
  - (3) In subsection (2)—
    - (a) omit “28(3),” and
    - (b) for “36(3), 42(2) or 43(3)” substitute “or 42(2)”.
  - (4) After subsection (2) insert—
    - (2A) Information contained in a historical record cannot be exempt information by virtue of section 36 except—
      - (a) in a case falling within subsection (2)(a)(ii) of that section, or
      - (b) in a case falling within subsection (2)(c) of that section where the prejudice or likely prejudice relates to the effective conduct of public affairs in Northern Ireland.
    - (2B) Compliance with section 1(1)(a) in relation to a historical record is not to be taken to have any of the effects referred to in subsection (3) of section 36, except where the effect—
      - (a) falls within subsection (2)(a)(ii) of that section, or
      - (b) falls within subsection (2)(c) of that section and relates to the effective conduct of public affairs in Northern Ireland.
    - (2C) Information cannot be exempt information—
      - (a) by virtue of section 28 or 43, or
      - (b) by virtue of section 36 in the excepted cases mentioned in subsection (2A),after the end of the period of thirty years beginning with the year following that in which the record containing the information was created.
    - (2D) Compliance with section 1(1)(a) in relation to any record is not to be taken, at any time after the end of the period of thirty years beginning with the year following that in which the record was created, to be capable—
      - (a) of prejudicing any of the matters referred to in section 28(1) or 43(2), or

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- (b) of having any of the effects referred to in section 36(3) in the excepted cases mentioned in subsection (2B).
- (2E) Information cannot be exempt information by virtue of any of paragraphs (a) to (ad) of section 37(1) after whichever is the later of-
  - (a) the end of the period of five years beginning with the date of the relevant death, and
  - (b) the end of the period of twenty years beginning with the date on which the record containing the information was created.
- (2F) In subsection (2E)(a) “the relevant death” means-
  - (a) for the purposes of any of paragraphs (a) to (ac) of section 37(1), the death of the person referred to in the paragraph concerned, or
  - (b) for the purposes of section 37(1)(ad), the death of the Sovereign reigning when the record containing the information was created.”

### 6. After section 80 insert-

- “80A Information held by Northern Ireland bodies
- (1) This section applies to information held by-
    - (a) the Northern Ireland Assembly,
    - (b) a Northern Ireland department, or
    - (c) a Northern Ireland public authority.
  - (2) In their application to information to which this section applies, the provisions of this Act have effect subject to the following modifications.
  - (3) Section 2(3) (exemptions not subject to public interest test) is to be read as if paragraph (ea) were omitted.
  - (4) Section 37(1) (communications with Her Majesty, etc) is to be read as if for paragraphs (a) to (ad) there were substituted-
    - “(a) communications with the Sovereign, with other members of the Royal Family or with the Royal Household, or”.
  - “(5) Section 62(1) (meaning of “historical record”) is to be read as if the reference to twenty years were a reference to thirty years.
  - (6) Section 63 (removal of exemptions: historical records generally) is to be read as if-
    - (a) in subsection (1), for the words from “section” to the end there were substituted “section 28, 30(1), 32, 33, 35, 36, 37(1)(a), 42 or 43”,
    - (b) in subsection (2), for the words from “section” to the end there were substituted “section 28(3), 33(3), 36(3), 42(2) or 43(3)”, and
    - (c) subsections (2A) to (2F) were omitted.”

### GENERAL NOTE

This Schedule first appeared in HL Bill 40, in almost the same terms (see also, lords’ amendments in Bill 106). It is introduced by s.46(1).

It comprises six paragraphs.

Paragraph 6 came as a surprise to MPs, on March 2, 2010. The Northern Ireland Office, apparently concerned about the 1998 negotiations leading to the Belfast Agreement, sought, and obtained, an opt out. The 30-year rule is to continue in Northern Ireland. Jack Straw said:

“We are simply maintaining the status quo with respect to Northern Ireland. We did not ask the Northern Ireland Assembly whether it wanted us to do that, because there was not anything in particular to ask it since we are not changing anything. It will remain open to the Assembly to pass its own freedom of information legislation relating to its own areas of business if it wants to bring it into line with what is happening in this House.” (*Hansard*, Vol.506, col.846.)

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