



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

---

Paper 88/11

7 September 2011

NIAR 438-11

**Colin Pidgeon**

# Conduct and discipline in the civil service

This Briefing Paper examines the disciplinary arrangements for civil servants in Northern Ireland and in other jurisdictions. It also considers lines of accountability between ministers, officials and the legislature, including rules for officials appearing before committees.

# Contents

- Key points .....3
- 1. Introduction .....4
- 2. Disciplinary procedures for the senior civil service.....4
  - 2.1. Northern Ireland .....5
  - 2.2. The Home Civil Service .....8
  - 2.3. Republic of Ireland.....9
  - 2.4. New Zealand .....10
  - 2.5. Australia .....10
- 3. Rules for civil servants in relation to committees of the legislature.....12
  - 3.1. Northern Ireland .....12
  - 3.2. Westminster: the Osmotherly Rules.....12
  - 3.3. Scotland .....17
  - 3.4. Wales .....20
  - 3.5. Canada.....20
  - 3.6. New Zealand .....22
  - 3.7. Australia .....25
- Appendix .....27

## Key points

- The disciplinary procedures for top civil servants are remarkably similar in Northern Ireland and Great Britain;
- The Northern Ireland Civil Service disciplinary procedures appear to allow for a greater input from outside the NICS than those that apply to the Home Civil Service;
- It is not clear whether the disciplinary procedures satisfy the ‘four essential procedural principles’ identified by research conducted for the EU and OECD;
- There is not an explicit requirement for independence in the NICS provisions relating to top civil servants, but in a recent instance, that independence does seem to have been sought;
- There is no agreed or formal guidance for civil servants appearing before committees of the Northern Ireland Assembly;
- The Osmotherly Rules that guide civil servants in Westminster have not been formally approved by the UK Parliament;
- The principle of ministerial accountability to the legislature and official accountability to the minister is a feature of all the guidance presented. But there is a departure in provisions in Australia and New Zealand which allow for committees to act in the manner of a quasi-tribunal in relation to an official’s conduct or performance; and,
- In New Zealand, officials are provided with a ‘natural justice’ right of reply to allegations made about their conduct or performance.

## 1. Introduction

The Briefing Paper was commissioned following the Committee for Finance and Personnel's consideration in June of issues relating to the accountability arrangements for Permanent Secretaries and the Head of the Civil Service. In particular, the Committee was interested in procedures for explaining decisions on disciplinary matters and for communicating these to the Assembly.

Section 2 of the paper considers the formal disciplinary procedures in the Northern Ireland Civil Service (NICS) in the light of the procedures in a number of other jurisdictions. Section 3 of the paper looks at rules for engagement between government officials and committees of the legislature – again drawing in some examples from other jurisdictions.

## 2. Disciplinary procedures for the senior civil service

Research conducted for the European Union and the Organisation for Economic Cooperation and Development (OECD) has noted that the disciplinary powers of an administration vis-à-vis its civil servants and employees are similar to those held by any private sector employer. But, it also noted that differences emerge because civil servants have obligations that do not affect private-sector employees. These include:

*...fidelity to the constitutional and legal order of the country, stricter regulations on conflict of interests, impartiality, and more demanding regulations on personal integrity and fairness in their dealings with the public, their superiors and colleagues. These are specific civil service obligations, which, by extension, are also obligations on all public employees.*

It is argued that:

*Such obligations, derived from civil service and constitutional considerations, transcend the role of the administration as a mere employer organisation. Thus, procedures concerning disciplinary sanctions must be stronger and more formalised in public employment than in the private sector.<sup>1</sup>*

Further, the research identified four essential procedural principles for imposing disciplinary sanctions. These are:

- **Adversarial principle:** the disciplinary authority must respect the right of civil servants to defend themselves against the charges and be allowed to submit their own version of the facts, arguments and evidence. An accused official must be

---

<sup>1</sup> Cardona, J (2003) 'Liabilities and discipline of civil servants' available online at: <http://www.oecd.org/dataoecd/61/6/37890790.pdf> (accessed 10 August 2011) (see page 2)

allowed the right to representation and witnesses should be subject to interrogation by both parties (accuser and accused);

- **Access to documents:** the official must be allowed access to documents which constitute the basis for the charges or that may be relevant to his or her defence;
- **Right to a hearing:** once all evidence has been gathered – including witnesses evidence – the official must be accorded the right of a hearing; and,
- **Right to appeal:** a right to appeal to a court should be allowed.

The disciplinary procedures that apply to officials in the Northern Ireland Civil Service (NICS) are presented in this section. It is not clear from the information publicly available whether the procedures satisfy these four principles or not.

It is also interesting to note that it has been observed that:

*The most striking feature of the UK's Civil Service Code is that while at first sight it might seem to be a code of conduct, its real focus is on the constitutional status of civil servants. The Code contains relatively little about personal propriety of public officials, or about conflicts of interest, post-employment, or personal gain from office.<sup>2</sup>*

However, this appears to have been remedied in Great Britain by the Constitutional Reform and Governance Act 2010 which placed an updated *Civil Service Code* on a statutory footing. The updated Code now identifies standards of behaviour that are required including: integrity; honesty; objectivity; impartiality; and, political impartiality.<sup>3</sup>

It is also a requirement of the UK Ministerial Code that ministers should:

*...require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code<sup>4</sup>*

The standards of behaviour in the *Civil Service Code* in appear to be largely the same in the Northern Ireland Civil Service Commissioners' *Code of Ethics*<sup>5</sup>

## 2.1. Northern Ireland

The NICS handbook sets out the disciplinary procedures for all civil servants. In practice, disciplinary powers are exercised by the Permanent Heads of

<sup>2</sup> Hine, D (2004) 'Codes of conduct for public officials in Europe: common label divergent purposes' available online at: [http://government.politics.ox.ac.uk/projects/standards/Hine\\_Codes\\_of\\_Conduct.pdf](http://government.politics.ox.ac.uk/projects/standards/Hine_Codes_of_Conduct.pdf) (accessed 10 August 2011) (see page 9)

<sup>3</sup> Cabinet Office (2010) 'Civil Service Code' available online at: <http://www.civilservice.gov.uk/about/values/cscode/index.aspx> (accessed 10 August 2011)

<sup>4</sup> Ministerial Code (2010) available online at: <http://www.civilservant.org.uk/ministerialcode2010.pdf> (accessed 10 August 2011) (see page 1)

<sup>5</sup> See <http://www.nicscommissioners.org/documents/CodeofEthics.PDF> (accessed 10 August 2011)

Departments/Agency Chief Executives or, in the case of Permanent Secretaries and Heads of Departments, by the Head of the Northern Ireland Civil Service.

Disciplinary powers may be delegated to less senior officials. This allows for appeals to be considered by someone more senior in the management chain. Paragraph 2.6 of the disciplinary procedures states:

*Heads of Departments normally delegate decisions if you are below Grade 3 level in order that they may be able themselves to deal with appeals.*<sup>6</sup>

The level of delegation is at the discretion of the Head of Department, although a decision to dismiss an official may not be delegated below Grade 7.<sup>7</sup> Other disciplinary penalties available to persons exercising formal disciplinary powers include written reprimand; suspension without pay for a specific period; downgrading or demotion; or, a ban on promotion for a specific period.<sup>8</sup>

In the case of Permanent Secretaries, the following procedure applies:

*The Head of the Northern Ireland Civil Service will deal with any cases if you are a Permanent Secretary or equivalent or a Head of Department/Agency Chief Executive. In such cases, the normal practice, after consultation with the Minister of the Department concerned and with the Secretary of State for Northern Ireland, will be to set up a board of inquiry that will report to the Head of the Northern Ireland Civil Service.*<sup>9</sup>

When the Head of the Civil Service deals with a disciplinary case, there is no official in Northern Ireland further up in the official management chain to whom the subject of the case could appeal.

The NICS handbook does not give any further details in relation to the conduct of cases by the Head of the Civil Service. This raises some questions:

- How is the board of inquiry established?
- Is there a requirement for the board of inquiry to be independent of the civil service or of ministers?
- Does the board of inquiry have a role in recommending the appropriate disciplinary penalty?
- Is there a role for the Head of the Home Civil Service (also the UK Government Cabinet Secretary) in disciplinary procedures?

<sup>6</sup> See 2.6 of Section 6.03 of the NICS HR Handbook, available online at: <http://www.dfpni.gov.uk/6.03-discipline.pdf> (accessed 5 August 2011)

<sup>7</sup> See 2.5 of Section 6.03 of the NICS HR Handbook, available online at: <http://www.dfpni.gov.uk/6.03-discipline.pdf> (accessed 5 August 2011)

<sup>8</sup> See 4.3.1 of Section 6.03 of the NICS HR Handbook, available online at: <http://www.dfpni.gov.uk/6.03-discipline.pdf> (accessed 5 August 2011)

<sup>9</sup> See 2.7 of Section 6.03 of the NICS HR Handbook, available online at: <http://www.dfpni.gov.uk/6.03-discipline.pdf> (accessed 5 August 2011)

- What are the procedures for communicating and/or explaining the outcome to the Assembly?

The final question is relevant particularly if the offence related to the conduct of an official in his or her interaction with an Assembly committee. It might be seen as reasonable that the relevant committee would be formally informed of the outcome by the Head of the Civil Service, for example.

In a recent disciplinary case, the conduct of Mr Paul Priestly, former Permanent Secretary of the Department of Regional Development, was investigated by Sir Jon Shortridge KCB, former Permanent Secretary of the Welsh Assembly Government. His report was required to include:

*...comment on whether you believe there may have been any misconduct, including breaches of relevant standards of conduct, terms and conditions of appointment, and in Mr Priestly's case, his personal responsibilities as Accounting Officer and Head of Department.*<sup>10</sup>

There is no specific mention of recommending appropriate penalties. It is clear that the individual tasked with reporting was formally independent of the NICS. A separate board of inquiry was also established. The appeal was heard by the Permanent Secretary in the Scottish Administration, again providing a degree of independence.

### **The status of the NICS handbook**

The NICS handbook is not a statutory document. As such, it is an administrative document for the purposes of managing the terms and conditions of civil servants' employment. In evidence to the Public Accounts Committee a DFP official noted that the handbook was "*constructed and designed to comply with employment legislation*".<sup>11</sup>

The official went on to explain that the NICS as an employer was required to keep within the provisions of the handbook in relation to disciplinary matters:

*If the employer, in managing a disciplinary process, unilaterally steps outside the arrangements that have been agreed, the employer leaves itself open to legal challenge or a grievance being brought against the employer and would have very little defence.*<sup>12</sup>

<sup>10</sup> Statement by the Head of the Civil Service, 1 September 2010, available online at:

<http://www.northernireland.gov.uk/index/media-centre/executive-statements/statement-010910-statement-from-the-head-of-the-northern-ireland-civil-service.htm> (accessed 5 August 2011)

<sup>11</sup> Official Report, 29 June 2011, available online at:

<http://www.niassembly.gov.uk/record/committees2011/PAC/110629Head%20of%20NI%20Civil%20Service.pdf> (accessed 5 August 2011) (see page 9)

<sup>12</sup> Official Report, 29 June 2011, available online at:

<http://www.niassembly.gov.uk/record/committees2011/PAC/110629Head%20of%20NI%20Civil%20Service.pdf> (accessed 5 August 2011) (see pages 9-10)

## 2.2. The Home Civil Service

The *Civil Service Management Code* applies to all officials working in departments and agencies of the UK government administration. For the purposes of the Code, both the Scottish Administration and the Welsh Assembly Government are treated as if they were Whitehall departments; the civil servants working for Scottish and Welsh ministers are members of the Home Civil Service.

The disciplinary procedures are set out in the Code:

### ***Disciplinary hearings and decision-making***

*4.5.6 Disciplinary decisions must be taken by someone at least one level higher than the individual concerned and appeals on disciplinary matters must be heard, where this is possible, by someone at least one level higher than the person making the decision being appealed. Wherever possible, appeal decisions should be taken by someone independent of the original disciplinary decision.*

*4.5.7 Decisions concerning Permanent Secretaries, Heads of Department and their direct equivalents and any other Heads of Department must be taken by the Head of the Home Civil Service after consultation with the Minister of the Department concerned and, as appropriate, the Prime Minister. Below that level, decisions concerning postholders in Senior Civil Service salary band 4 and above with a minimum JESP score of 13 must be taken by the Permanent Head of the Department or Chief Executive of the Agency. Decisions concerning Chief Executives below that level must be taken by the Permanent Head of Department. Individuals in these cases have a right of appeal to the Head of the Home Civil Service.*

*4.5.8 Decisions not to proceed with disciplinary action in cases of serious fraud, other than where the individual is being prosecuted, must be taken by the Head of Department or Chief Executive of the agency after consultation with the responsible Minister.*

*4.5.9 The sanctions applied as a result of disciplinary proceedings are a matter for the department or agency concerned in the light of the circumstances of each case.<sup>13</sup>*

In essence the procedures set out in the Code bear evident resemblance to those applicable to civil servants in the NICS. Cases concerning the very top tier of management are dealt with by the Head of the Home Civil Service, the Cabinet Secretary. Unlike the NICS provisions, however, there is no mention of a board of inquiry, or any other body, reporting, or making recommendations, to the Head of the Home Civil Service.

---

<sup>13</sup> The Civil Service Management Code, June 2011, available online at: [http://www.civilservice.gov.uk/Assets/civil-service-management-code-June2011\\_tcm6-3222.doc](http://www.civilservice.gov.uk/Assets/civil-service-management-code-June2011_tcm6-3222.doc) (accessed 5 August 2011)



An official from the Cabinet Office confirmed that there is not a requirement to report the outcomes of disciplinary proceedings to Parliament. This would not occur primarily because irrespective of the level, disciplinary matters are internal matters within the Civil Service and not matters for the public domain. There would also be issues of data protection were individual's details placed in the public domain.

In relation to independent input to an investigation by the head of the Civil Service, Cabinet Office has confirmed that there is not a requirement for outside input in terms of the decision being taken. Again, disciplinary matters are dealt with within the Civil Service. That said, an official noted that it may be that as part of the investigation outside input is required to gather the necessary evidence/test mitigation (e.g. referral to the Occupational Health Adviser if there was a medical angle) but there is not a requirement for a body/individual independent of the civil service to be involved in the actual decision-making.<sup>14</sup>

### 2.3. Republic of Ireland

In the Republic of Ireland discipline in the civil service is governed by the *Civil Service Disciplinary Code*.<sup>15</sup> In its current form, the procedures in the Code only apply to officials up to and including the grade of Principal Officer (more or less equivalent to Grade 5/Director in the NICS). It does not apply to the Secretary General (analogous with Permanent Secretary in the NICS) or Assistant Secretary (analogous with Deputy Secretary in the NICS).

Whilst there is no written procedure for discipline in the top two grades, an official in the Department of Public Expenditure and Reform has advised that this is currently being addressed. Legal advice to the Department has stated that it is necessary for formal procedures to be developed and incorporated in the Code.

Until this happens, the natural justice principles of the Code would be applied if any formal disciplinary procedure were required. Past practice has been that, in the case of an Assistant Secretary, the Secretary General would conduct an investigation.

In the case of a Secretary General, it would be the Minister who would be considered legally to be the 'appropriate authority'. In the case of a dismissal, because Secretaries General are appointees of the government, it would be the government that would be required to act to dismiss.<sup>16</sup>

---

<sup>14</sup> Source: personal communication with Cabinet Office officials

<sup>15</sup> See 'Circular 14/2006: Civil Service Disciplinary Code revised in accordance with the Civil Service Regulation (Amendment) Act 2005' available online at: <http://www.personnelcode.gov.ie/Search.aspx> (accessed 10 August 2011)

<sup>16</sup> Source: personal communication with Department of Public Expenditure and Reform official

## 2.4. New Zealand

In New Zealand the State Services Commissioner<sup>17</sup> is, on behalf of the Crown, the employer of Chief executives/heads of departments. The Commissioner is required under the State Sector Act 1988 to be a “good employer”. This is defined in the Act as:

*...an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment<sup>18</sup>*

Chief executives/departmental heads are employed on terms and conditions contained in a written employment agreement between the chief executive and the Commissioner. General employment principles apply to the disciplinary procedures for these officials, with some specific additional provisions giving the State Services Commissioner the power to suspend a Chief Executive. The Commissioner may only dismiss, with the approval of the New Zealand Governor General in Council, with “just cause or excuse”.

Consistent with New Zealand employment law relating to disciplinary actions, the Commissioner may after a fair investigative process give a chief executive a warning, written warning or dismiss. Although they are discretionary chief executives usually receive performance payments annually. Poor performance or misconduct can result in a chief executive receiving a reduced or no performance payment at all.<sup>19</sup> Provisions for appeal are contained within Schedule C to the Act and include mediation, recourse to the Employment Relations Authority and employment court.

## 2.5. Australia

In Western Australia, the conduct of officials is governed by the Public Sector Management Act 1994. This provides for disciplinary procedures to be exercised by the relevant ‘employing authority’. In most cases, the employing authority is the chief executive of the public sector agency or department (equivalent to an NICS permanent secretary).

Chief executives are appointed by the Governor, however. For the purposes of the legislation, the Public Service Commissioner (also an appointee of the Governor but not an officer of the public service and therefore independent of the civil service) acts as the employing authority. Disciplinary procedures for chief executives apply in the same way as to any other official with one exception.

If the Public Sector Commissioner finds that a chief executive has committed a breach of discipline, and dismissal is warranted, then that recommendation must first be put to

<sup>17</sup> See <http://www.ssc.govt.nz/> for further information

<sup>18</sup> Available online at:

[http://www.legislation.govt.nz/act/public/1988/0020/latest/DLM129110.html?search=ts\\_act\\_commerce+act\\_resel](http://www.legislation.govt.nz/act/public/1988/0020/latest/DLM129110.html?search=ts_act_commerce+act_resel)  
(accessed 18 August 2011) (see section 56(2))

<sup>19</sup> Source: personal communication from official in State Services Commission

the Governor, who then acts to dismiss. Under the legislation, the Governor *must* act on the recommendation of the Commissioner.

In all cases, including both chief executives and other officials, the right to appeal is the same. Rather than appealing to an official higher in the line management chain (which is the NICS and Home Civil Service practice although there is also a UK Civil Service Appeals Board, due to be abolished by the end of 2011.<sup>20</sup> The Northern Ireland Civil Service Appeal Board is still in existence.<sup>21</sup>), the appeal goes to the Public Service Appeal Board, part of the Western Australian Industrial Relations Commission.

---

<sup>20</sup> <http://www.civilserviceappealboard.gov.uk/>

<sup>21</sup> [http://www.dfpni.gov.uk/2.07\\_civil\\_service\\_appeal\\_board.pdf](http://www.dfpni.gov.uk/2.07_civil_service_appeal_board.pdf)

### 3. Rules for civil servants in relation to committees of the legislature

The Committee's interest in the disciplinary procedures for civil servants arose - at least in part - because of concerns relating to the accountability of the top tier of civil service management to the Assembly. This section of the paper introduces the so-called 'Osmotherly Rules' that originated in Whitehall which address some of the relevant issues. Some examples from other jurisdictions are also presented.

#### 3.1. Northern Ireland

There is no equivalent to the Osmotherly Rules applicable in Northern Ireland. According to officials in the Office of the First and Deputy First Minister (the department with responsibility for relations between the Assembly and the Executive) the Osmotherly Rules formed the basis of draft guidance that was prepared jointly by the NICS and Assembly officials during 2001-02.

Although the draft was agreed by the Chairpersons' Liaison Group at that time, the Executive did not have time to consider it before suspension in 2002. The draft was therefore never finalised. Officials called upon to give evidence are currently referred to the Assembly-prepared guidance *Guide for Witnesses appearing before Assembly Committees*.<sup>22</sup> This is, however, general guidance for all witnesses and does not address the specific issues covered by the Osmotherly Rules.

Following the restoration of devolution in 2007, it was agreed between officials of the Assembly and OFMDFM that rather than reactivate, and seek agreement on the draft guidance as a composite document, it would be of greater benefit, and more manageable, to produce a series of separate guidance notes which effectively covered the range of issues in the draft guidance. The first of these, *Timescales on the provision of information between Departments and Assembly Committees* (attached as an Appendix) was agreed between CLG and the Executive before dissolution of the last Assembly and has been in operation since the beginning of this current mandate.<sup>23</sup>

This guidance (which was four years in the making) does cover some of the areas covered by the Osmotherly Rules - the provision of information is addressed - but it does not cover the wider accountability issues discussed above. According to an OFMDFM official consideration is being given to the preparation of further guidance notes.

#### 3.2. Westminster: the Osmotherly Rules

The House of Commons Library has produced a helpful and comprehensive briefing on the development of the Osmotherly Rules which records the process as something of a

---

<sup>22</sup> Available online at: [http://www.niassembly.gov.uk/io/Guide\\_for\\_witnesses\\_for\\_committees.htm](http://www.niassembly.gov.uk/io/Guide_for_witnesses_for_committees.htm) (accessed 10 August 2011)

<sup>23</sup> Source: personal communication with OFMDFM official

tussle between Parliament and the Government.<sup>24</sup> Significant events that led to the current version of the rules include the Westland affair in the mid-1980s (when there was a dispute in the UK Cabinet about the allocation of contracts for helicopters) and the events surrounding the death of Dr David Kelly and his attendance before the Foreign Affairs Committee in 2003.

### Ministerial accountability

The official title of the latest version of the rules is *Departmental Evidence and Response to Select Committees*.<sup>25</sup> In relation to ministerial accountability the rules make it clear that officials give evidence **on behalf** of ministers:

*40. Civil servants who give evidence to Select Committees do so on behalf of their Ministers and under their directions.*

*41. This is in accordance with the principle that it is Ministers who are accountable to Parliament for the policies and actions of their Departments. Civil servants are accountable to Ministers and are subject to their instruction; but they are not directly accountable to Parliament in the same way. It is for this reason that when civil servants appear before Select Committees they do so, on behalf of their Ministers and under their directions because it is the Minister, not the civil servant, who is accountable to Parliament for the evidence given to the Committee. This does not mean, of course, that officials may not be called upon to give a full account of Government policies, or indeed of their own actions or recollections of particular events, but their purpose in doing so is to contribute to the central process of Ministerial accountability, not to offer personal views or judgements on matters of political controversy (see paragraphs 55-56), or **to become involved in what would amount to disciplinary investigations which are for Departments to undertake** (see paragraphs 73 -78).[emphasis added]*

The final sentence is of particular relevance in relation to recent events in the Northern Ireland Assembly (for more information see below under *Conduct*).

Paragraph 55 of the guidance states that officials should not be drawn into discussing areas that are controversial politically but instead remain factual and explain objectives and targets as the Government sees them:

*... Any comment by officials on government policies and actions should always be consistent with the principle of civil service political impartiality.*

<sup>24</sup> House of Commons Library Standard Note SN/PC/2671 (2005) available online at: <http://www.parliament.uk/briefing-papers/SN02671> (accessed 5 August 2011)

<sup>25</sup> Cabinet Office (2005) 'Departmental Evidence and Response to Select Committees' available online at: [http://tna.europarchive.org/20070205112249/http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/documents/osmotherly\\_rules.pdf](http://tna.europarchive.org/20070205112249/http://www.cabinetoffice.gov.uk/propriety_and_ethics/documents/osmotherly_rules.pdf) (accessed 08 August 2011)

*Officials should as far as possible avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. If official witnesses are pressed by the Committee to go beyond these limits, they should suggest that the questioning should be referred to Ministers.*

In addition the guidance states that it is not appropriate for specialists (economists or statisticians, for example) to comment in relation to policy areas that are matters of controversy within their own profession. Also paragraph 56 states:

*... It is not generally open to such witnesses to describe or comment upon the advice which they have given to Departments, or would give if asked. They should not therefore go beyond explaining the reasoning which, in the Government's judgement, supports its policy.*

### **Summoning named officials**

The rules also make clear that it is up to ministers to decide which official or officials should represent them in a committee hearing – with the exception of PAC where permanent secretaries, as Accounting Officers, have personal responsibility for the proper use of funds. However, they also state that the presumption should be that ministers will agree to requests from committees wishing to speak to particular named officials:

*44. Where a Select Committee indicates that it wishes to take evidence from a particular named official, including special advisers, the presumption should be that Ministers will agree to meet such a request. However, the final decision on who is best able to represent the Minister rests with the Minister concerned and it remains the right of a Minister to suggest an alternative civil servant to that named by the Committee if he or she feels that the former is better placed to represent them. In the unlikely event of there being no agreement about which official should most appropriately give evidence, it is open to the Minister to offer to appear personally before the Committee.*

This section of the guidance also reinforces the importance of committees not acting as tribunals:

*46. It has also been agreed that it is not the role of Select Committees to act as disciplinary tribunals (see paragraphs 73-78). A Minister will therefore wish to consider carefully a Committee's request to take evidence from a named official where this is likely to expose the individual concerned to questioning about their personal responsibility or the allocation of blame as between them and others. This will be particularly so where the official concerned has been subject to, or may be subject to, an internal departmental inquiry or disciplinary proceedings. Ministers may, in such circumstances, wish to suggest either that he or she give evidence*

*personally to the Committee or that a designated senior official do so on their behalf. This policy was set out in the then Government's response to a report from the Public Service Committee on Ministerial Accountability and Responsibility (First Report, Session 1996-97, HC 67).*

*47. If a Committee nonetheless insists on a particular official appearing before them, contrary to the Minister's wishes, the formal position remains that it could issue an order for attendance, and request the House to enforce it. In such an event the official, as any other citizen, would have to appear before the Committee but, in all circumstances, would remain subject to Ministerial instruction under the terms of this Guidance and the Civil Service Code.*

So, even if a committee insists upon a named official appearing, it cannot insist that the official gives evidence that contradicts the instruction of ministers in relation to a particular issue.

## **Conduct**

The rules give further guidance in relation investigation by committees of the conduct of individual officials:

*73. Occasionally questions from a Select Committee may appear to be directed to the conduct of individual officials, not just in the sense of establishing the facts about what occurred in making decisions or implementing Government policies, but with the implication of allocating individual criticism or blame.*

*74. In such circumstances, and in accordance with the principles of Ministerial accountability, it is for the Minister to look into the matter and if necessary to institute a formal inquiry. Such an inquiry into the conduct and behaviour of individual officials and consideration of disciplinary action is properly carried out within the Department according to established procedures designed and agreed for the purpose, and with appropriate safeguards for the individual. It is then the Minister's responsibility to inform the Committee of what has happened, and of what has been done to put the matter right and to prevent a recurrence. Evidence to a Select Committee on this should be given not by the official or officials concerned, but by the Minister or by a senior official designated by the Minister to give such evidence on the Minister's behalf.*

*75. In this context, Departments should adhere to the principle that disciplinary and employment matters are a matter of confidence and trust (extending in law beyond the end of employment). In such circumstances, public disclosure may damage an individual's reputation without that individual having the same "natural justice" right of response which is*

*recognised by other forms of tribunal or inquiry. Any public information should therefore be cast as far as possible in ways which do not reveal individual or identifiable details. Where Committees need such details to discharge their responsibilities, they should be offered in closed session and on an understanding confidentiality. Evidence on such matters should normally be given on the basis that:*

*(a) information will not be given about Departmental disciplinary proceedings until the hearings are complete;*

*(b) when hearings have been completed, the Department will inform the Committee of the outcome in a form which protects the identity of the individual or individuals concerned except insofar as this is already public knowledge;*

*(c) where more detail is needed to enable the Committee to discharge its responsibilities, such detail will be given but on the basis of a clear understanding of its confidentiality;*

*(d) the Committee will thereafter be given an account of the measures taken to put right what went wrong and to prevent a repeat of any failures which have arisen from weaknesses in the Departmental arrangements.*

These rules provide officials with protection from criticism of their conduct in committee which may have an impact on their professional standing and reputation. It is clearly the view of the Cabinet Office that – irrespective of whether such criticism is warranted or not – a committee is not the appropriate place for this kind of examination to take place, at least in part because the official in question has no right of redress if criticisms turn out to be unfounded (because of parliamentary privilege), or a right of reply.

### **The status of the Osmotherly Rules**

The Rules are a UK Government document and they have never been formally accepted by the House of Commons.

A report by the Treasury and Civil Service Select Committee in 1994 contained some commentary which reveals some of the arguments surrounding the issue of the status of the Rules, albeit in relation to an earlier incarnation:

*The Osmotherly Rules which guide civil servants on assistance to Select Committees have been considered by previous Select Committees and were discussed in evidence to the Sub-Committee. A number of Select Committees have emphasised that these notes of guidance are an internal Government document with no Parliamentary status whatever and which has never been endorsed by Select Committees. This was acknowledged by Sir Robin Butler in 1988, who said that it "would not be proper" for a Committee to endorse the guidance.' Professor Peter Hennessy was highly*



*critical of the Osmotherly Rules, describing them as an affront to Parliament, providing sixty ways for civil servants to say no to Select Committees." A former civil servant recalled that "when I last had to give evidence to a Commons Select Committee, I re-read the [Osmotherly] Rules and considered then that for any civil servant to follow them would make his or her evidence at best anodyne, or at worst positively misleading". Mr Waldegrave accepted that the guidance contained in the Osmotherly Rules was "very detailed" and indicated that he was prepared to consider some of the apparently unnecessarily restrictive parts of the Rules, but he reaffirmed that the Rules were restrictive precisely because they were designed to maintain "the proper system of accountability through Ministers". Subsequently the Government announced its intention to revise the guidance in the light of the Open Government White Paper and comments made in evidence by Members of the Committee. Professor Hennessy proposed that the Liaison Committee should indicate that it was no longer prepared to put up with the Osmotherly Rules and should seek to negotiate new rules with the Government." This idea was opposed by a former Clerk of Committees of the House of Commons, who argued that such negotiation might compromise the rights of Select Committees to ask questions and the rights and privileges of the House of Commons more generally.<sup>26</sup>*

The argument put forward in the final sentence is potentially an important one: if a legislature were to agree a particular set of rules, it may potentially hinder the freedom of its committees to enquire into the issues that they feel are important. The Committee may wish to take advice on this matter.

### 3.3. Scotland

Arrangements in Scotland are somewhat different. This may be, in part at least, due to the fact that - unlike Westminster, or the Canadian, New Zealand or Australian parliaments - the Scottish Parliament is a creature of statute: parliamentary privilege does not apply.<sup>27</sup> But, as noted above, civil servants working in Scotland are part of the Home Civil Service.

The Scottish Executive has published *Scottish Executive Evidence and Responses to Committees of the Scottish Parliament*<sup>28</sup> which bears evident similarities to the Osmotherly Rules. This was in response to a motion passed by the Parliament:

<sup>26</sup> HC 27 Session 1993-94

<sup>27</sup> For more information on parliamentary privilege please refer to Research Paper 27/11 available online at: <http://www.niassembly.gov.uk/researchandlibrary/2011/2711.pdf> (accessed 08 August 2011)

<sup>28</sup> Scottish Executive (2001) 'Scottish Executive Evidence and Responses to Committees of the Scottish Parliament' available online at: <http://www.scotland.gov.uk/Resource/Doc/1066/0006087.pdf> (accessed 09 August 2011)

*That the Parliament notes that the Executive is committed to a policy of openness, accessibility and accountability in all its dealings with the Parliament and its Committees; further notes both the Parliament's right and duty to hold the Executive to account, including the power to invoke section 23 of the Scotland Act, and the public interest in maintaining the confidentiality of exchanges between officials and Ministers concerning policy advice; observes that other Parliaments with strong freedom of information regimes do not disclose the terms of such exchanges; calls, to that end, for the Executive and the Parliament to observe the following principles:*

*i) consistent with its policy of openness, the Executive should always seek to make as much information as possible publicly available as a matter of course and should respond positively to requests for information from the parliament and its Committees;*

*ii) officials are accountable to Ministers and Ministers in turn are accountable to the Parliament and it follows that, while officials can provide Committees with factual information, Committees should look to Ministers to account for the policy decisions they have taken;*

*iii) where, exceptionally, Committees find it necessary to scrutinise exchanges between officials and Ministers on policy issues, arrangements should be made to ensure that the confidentiality of these exchanges is respected,*

*and commends these principles to Committees as guidelines to be followed in their dealings with the Executive.<sup>29</sup>*

## **Ministerial accountability**

On the subject of accountability, the guidance states:

*It is important for officials to be fully aware of their constitutional position. A central principle of the relationship between officials and Committees is that officials give evidence to Committees on behalf of their Ministers, under their directions and with their approval. This in turn reflects the principle that it is Ministers who are directly accountable to the Parliament for both their own policies and for the actions of their Executive Departments.*

The Scottish Parliament Procedure Committee examined the operation of the Executive rules in a report in 2003 on the application of the founding principles of the Scottish Parliament. It noted that the civil service was a reserved matter:

<sup>29</sup> Scottish Executive (2001) 'Scottish Executive Evidence and Responses to Committees of the Scottish Parliament' available online at: <http://www.scotland.gov.uk/Resource/Doc/1066/0006087.pdf> (accessed 09 August 2011) (see page 5)

*531. The Civil Service is a reserved matter under the terms of the 1998 Act. Civil servants serving the Scottish Executive are members of the Home Civil Service which also serves Ministers of the UK Government and the National Assembly for Wales. The consequence is that the terms of civil servants' engagement with the Parliament are not under the Parliament's control. Any change in these terms would appear to require changes to primary legislation at Westminster.<sup>30</sup>*

Instead of a legislative approach, a *Protocol between the Scottish Parliament and the Scottish Government in relation to the handling of Committee business*<sup>31</sup> was agreed which contains some relevant provisions.

### Summoning named officials

The agreement, or protocol provides that:

*...a committee should not normally express a preference for the attendance of named officials but may do so in exceptional circumstances where, for example, a specific official is closely associated with the policy area under scrutiny. Normally it is for the Scottish Government to decide which officials are best placed to give oral evidence on any occasion (according to responsibilities, experience and availability) and whether or not it would be suitable for a Minister to attend also. The Public Audit Committee, however, is entitled to invite named officials in their capacity as accountable officers.*

By stating that it is “normally” for the Scottish Government to decide who should give evidence, the implication seems to be – as suggested by the reference to ‘exceptional circumstances’ – that the provision of evidence is *not* always at the discretion of ministers. However, this position is not borne out by the guidance which states:

*...it is customary for Ministers to decide which official or officials should represent them.*

An official from the Scottish Executive has confirmed that the apparent conflict between the two documents relates more to the fact that they are general guidance intended to cover all circumstances rather than any genuine tension with the principle of Ministerial discretion.<sup>32</sup>

<sup>30</sup> Procedure Committee Third Report 2003 available online at: <http://www.scottish.parliament.uk/business/committees/historic/procedures/reports-03/prr03-03-vol01-03.htm#7>

<sup>31</sup> Available online at: <http://www.scottish.parliament.uk/business/parliamentaryProcedure/g-spse/sp-se-protocol.htm> (accessed 09 August 2011)

<sup>32</sup> Source: personal communication with Scottish Executive Constitution Unit

## Conduct

The provisions in the *Protocol between the Scottish Parliament and the Scottish Government in relation to the handling of Committee business* relating to inquiries into the conduct of individuals for the purposes of apportioning blame are the same as in the Osmotherly Rules cited above.

### 3.4. Wales

As noted above, civil servants in Wales are members of the Home Civil Service although they serve the Welsh Assembly Government.

An official in the People, Places and Corporate Services Division advised that the arrangements for evidence giving have been and are still developing. Originally based on the Osmotherly Rules, they have developed organically as the relationship and specific work with individual Committees has developed and administrations of the Welsh Government have changed. For example, the arrangements are currently under review following the outcome of the May 2011 National Assembly for Wales elections which produced a single party rather than coalition government.

The operating arrangements are not formally published but are tailored to the specific circumstances of a request to give evidence and the issues involved. They are issued to the relevant individuals by the Government Secretariat with each commission to give evidence and are not legally binding.<sup>33</sup>

### 3.5. Canada

In Canada, the Privy Council Office's *Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees*<sup>34</sup> address some of these same issues (albeit much more briefly – the entire document runs to fewer than three pages).

## Ministerial accountability

As the Canadian Parliament is based on the Westminster model of government, it is perhaps not surprising to find the same principles underlying the notion of ministerial accountability – i.e., that it is for ministers to determine which officials will give evidence on their behalf:

*The House and Senate, and their committees, have the power to call (or summon ) whomever they see fit and thus could in theory call officials even against the wishes of a Minister. (However, only the House and Senate themselves can compel witnesses to attend.) Committees, mindful of the principle of ministerial responsibility, usually solicit the testimony of officials*

<sup>33</sup> Source: personal communication with Welsh Assembly Government official

<sup>34</sup> Available online at: <http://www.pco-bcp.gc.ca/docs/information/Publications/notes/notes-eng.pdf> (accessed 09 August 2011)

*by informal invitation rather than by formal summons and do not generally insist on the appearance of particular individuals, leaving it instead to Ministers to determine which officials will speak on their behalf at committee. In the same vein, it is for Ministers to decide which questions they will answer and which questions properly can be answered by officials.*

*[...]*

*Witnesses testifying before Parliamentary committees are expected to answer all questions put by the committee. However, additional considerations come to bear in the case of public servants, since they appear on behalf of the Minister.*

*Public servants have a general duty, as well as a specific legal responsibility, to hold in confidence the information that may come into their possession in the course of their duties. This duty and responsibility are exercised within the framework of the law, including in particular any obligations of the Government to disclose information to the public under the Access to Information Act or to protect it from disclosure under other statutes such as the Privacy Act.*

*In the most general terms, and against this legal background, public servants have an obligation to behave in a manner that allows Ministers to maintain full confidence in the loyalty and trustworthiness of those who serve them. The preservation of this relationship of trust and confidence is essential to the conduct of good government. If public servants violate the trust bestowed on them by Ministers they undermine effective (and democratic) government. If they violate that trust on the grounds that they have a higher obligation to Parliament, then they undermine the fundamental principle of responsible government, namely that it is Ministers and not public servants who are accountable to the House of Commons for what is done by the Government.*

The comments on 'loyalty and trustworthiness' seem to indicate some parallel with the Osmotherly Rules' prohibition of disclosing the advice given to ministers in relation to contentious issues. As above, this principle underpins collective decision making by governments and the accountability of ministers to the legislature.

### **Summoning named officials**

Having firmly established these principles of accountability, the guidance does not address specifically the calling by committees of named officials.

## Conduct

In relation to conduct, the Canadian guidance contains the following statement which is relevant to this discussion:

*Unlike Ministers, however, public servants are not directly accountable to Parliament for their actions nor for the policies and programs of the Government.*

This is a rather concise way of expressing the notion that officials appear only to give factual information in relation to policy rather than to defend it, and also that their conduct and actions are not a matter for the Parliament. Ultimately:

*Public servants are accountable to their superiors and ultimately to their Minister for the proper and competent execution of their duties.*

This rather firmly plants the management of conduct and performance within the civil service and out of the legislature.

### 3.6. New Zealand

In New Zealand, the State Services Commission's *Officials and Select Committees – Guidelines*<sup>35</sup> set out general guidance and principles.

#### Ministerial accountability

In common with the other examples presented, the line of accountability for officials is to their minister, and the minister is accountable to the legislature:

*Officials appearing before select committees should be alert to the environment in which they operate, particularly the parliamentary environment. Parliament expects, and is entitled to receive, full and honest answers and evidence from those who appear before its select committees.*

*Public servants serve the Government of the day, within the framework of the law. Public service chief executives are responsible to the Minister for carrying out the functions of their departments, advising their Minister and other Ministers, and for the general conduct and efficient, effective, and economical management of their Departments (State Sector Act 1988, s 32). Ministers, in turn, are accountable to the House for Government policy and the activity of departments for which they are responsible.*

*Officials appearing before a select committee on behalf of a State Sector agency do so in support of Ministerial accountability. They are ultimately*

<sup>35</sup>Available online at: <http://www.ssc.govt.nz/officials-and-select-committees-2007> (accessed 09 August 2011)

*answerable to the Minister of the agency, who is in turn accountable to the House for the operations of the agency.*<sup>36</sup>

### Summoning named officials

Practice in relation to the summoning of particular officials also follows a familiar line. As above, it is up to ministers to determine which official attends a committee hearing:

*In appearing as witnesses public servants are acting on behalf of their Minister, and assist the Minister to fulfil accountability obligations to the House. Ministers are therefore responsible for the statements made and answers given on their behalf. The Minister ultimately has the right to decide who should represent the Government before a select committee, whether or not a committee has requested attendance of a named official. In practice, the departmental chief executive or his or her delegate will normally judge when it is necessary to consult the Minister, in the absence of any direction from the Minister. Committees normally expect chief executives to appear in person for the Estimates and financial reviews, supported by other staff as necessary.*

The principle of ministerial discretion is firmly articulated in this extract. There is a specific expectation that the departmental chief executive (head of department) will appear for examination by committee of the Estimates. This may be a reflection of the importance New Zealand's House of Representatives attaches to the scrutiny of estimates and financial memoranda but it also resembles the personal accountability of Accounting Officers to the PAC in the UK systems.

### Conduct

In contrast to the Osmotherly Rules, the New Zealand guidance does not prohibit committees from following particular lines of inquiry in relation to an official's conduct. Rather it places an obligation on officials to provide full and accurate information:

*The House needs to get free and frank answers and evidence from those who appear before its select committees. This is more likely to happen if officials appearing as witnesses or advisers are not in fear of retaliatory action from their employing agency or from their Minister.*<sup>37</sup>

This seems to place a totally different emphasis on officials' relationships both with committees and ministers. It is interesting that it provides a measure of protection for the official. It is not specifically spelt out, but it may extend to questions relating to an official's own conduct.

<sup>36</sup> Available online at: <http://www.ssc.govt.nz/officials-and-select-committees-2007> (accessed 09 August 2011) (see page 5)

<sup>37</sup> Available online at: <http://www.ssc.govt.nz/officials-and-select-committees-2007> (accessed 09 August 2011) (see page 13)

The guidance *does*, however, provide for officials to object to answering particular questions and provides, as examples, grounds on which such an objection may be made. These include:

- *Protecting the security of New Zealand, or the international relations of the Government of New Zealand (including information given in confidence to the Government by governments of other countries);*
- *Protecting the maintenance of the law;*
- *Avoiding endangering the safety of any person;*
- *Preventing serious damage to the economy of New Zealand;*
- *Protecting the privacy of individuals;*
- *Protecting commercially sensitive information;*
- *Protecting information that is subject to legal privilege; and*
- *Maintaining constitutional conventions relating to the confidentiality of advice, Ministerial responsibility and the political neutrality of officials.*

There is also separate guidance called *Natural Justice Before Select Committees: a Guide for Witnesses*, published by the Office of the Clerk of the House of Representatives. The guidance reflects the Standing Orders of the New Zealand Parliament, and addresses the concern raised earlier in the context of the Osmotherly Rules that officials have no right of reply in the face of criticisms from committees. It contains the following provisions relating to witnesses about whom allegations have been made which might result in reputational damage:

*If allegations have been made in select committee proceedings about you that may seriously damage your reputation, including during the hearing of secret evidence in some instances, you will be informed of those allegations. You will then be given reasonable opportunity to respond in writing and/or by appearing before the committee. Such a response will be received as evidence in the usual way. If the original allegation was made as private or secret evidence, your response can be made only under the same conditions, in order to avoid breaching the private or secret nature of the original evidence. Committees are under no obligation to make a finding in relation to an allegation.*

*If you consider that the evidence of additional witnesses is in your interest, you may ask the committee to hear from these witnesses. However, the decision whether or not to hear these witnesses rests with the committee.<sup>38</sup>*

<sup>38</sup>Available online at: [http://www.parliament.nz/NR/rdonlyres/6FA807F8-8020-411E-A060-CAED0502FD20/143036/natural\\_justice\\_2010\\_1.pdf](http://www.parliament.nz/NR/rdonlyres/6FA807F8-8020-411E-A060-CAED0502FD20/143036/natural_justice_2010_1.pdf) (accessed 09 August 2011) (see page 15)



This approach marks a departure from the practice in Westminster whereby (as the Osmotherly Rules note), officials do *not* have a ‘natural justice’ avenue open to them. It does seem, however, to open the possibility that – if committees are going to pursue quasi-tribunals into officials’ conduct – the principle of ministerial accountability is fundamentally altered, which raises questions about the role of committees as scrutineers and advisers rather than managers or employers.

### 3.7. Australia

The Australian Department of the Prime Minister and the Cabinet has published *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*.

#### Ministerial accountability

These guidelines again make clear the role of ministers in defending or justifying government policy:

*In the Australian system of parliamentary government, and consistent with the traditional understanding of ministerial responsibility, the public and parliamentary advocacy and defence of government policies and administration has traditionally been, and should remain, **the preserve of Ministers, not officials**. The duty of the public servant is to assist ministers to fulfil their accountability obligations by providing full and accurate information to the Parliament about the factual and technical background to policies and their administration. [emphasis added]<sup>39</sup>*

#### Summoning named officials

Australian practice is also that the choice of official to appear is the preserve of ministers:

*A Minister may delegate to the departmental Secretary the responsibility of deciding the official(s) most appropriate to provide the information sought by the committee. It is essential that the official(s) selected should have sufficient responsibility or be sufficiently close to the particular work area to be able to satisfy the committee's requirements.<sup>40</sup>*

#### Conduct

In a similar vein to the rules applying in New Zealand, it seems that, whilst officials are encouraged to be as open as possible with committees, there is the opportunity for officials to decline to answer:

<sup>39</sup> Available online at: [http://www.dpmc.gov.au/guidelines/docs/official\\_witnesses.pdf](http://www.dpmc.gov.au/guidelines/docs/official_witnesses.pdf) (accessed 09 August 2011) (see page 3)

<sup>40</sup> Available online at: [http://www.dpmc.gov.au/guidelines/docs/official\\_witnesses.pdf](http://www.dpmc.gov.au/guidelines/docs/official_witnesses.pdf) (accessed 09 August 2011) (see page 4)

*As described above [...], it is intended, subject to the application of certain necessary principles, that there be the freest possible flow of information between the public service, the Parliament and the public. To this end, officials should be open with committees and **if unable or unwilling to answer questions or provide information should say so, and give reasons**. It is also, of course, incumbent on officials to maintain the highest standards of courtesy in their dealings with parliamentary committees.[emphasis added]<sup>41</sup>*

Again like New Zealand practice, but unlike Westminster, it does appear open to committees to inquire into the conduct of particular individuals:

*Where a committee is inquiring into the personal actions of a Minister (or official) and seeks information from officials, there may be circumstances where it is not appropriate for the requirements [...] for clearance of evidence to be followed. (Note also that the Senate resolutions provide that a witness may apply to have assistance from counsel during the course of a hearing [...])*

Indeed, far from prohibiting the committee from acting in a manner akin to a tribunal, the fact that officials may have assistance from a legal representative during a hearing points to a rather different conception of what may or may not be discussed and the role of committees generally.

---

<sup>41</sup> Available online at: [http://www.dpmc.gov.au/guidelines/docs/official\\_witnesses.pdf](http://www.dpmc.gov.au/guidelines/docs/official_witnesses.pdf) (accessed 09 August 2011) (see page 6)

## Appendix

### **TIMESCALES FOR INTERACTION BETWEEN ASSEMBLY COMMITTEES AND DEPARTMENTS**

#### **Introduction**

1. The roles, functions and powers of Assembly committees are set out in the Belfast Agreement, the Northern Ireland Act 1998 as amended by the Northern Ireland (St Andrews Agreement) Act 2006 and the Standing Orders of the Assembly.
2. The Assembly has established 12 statutory committees and 6 standing committees. The role of the statutory committees, as set out in the Northern Ireland Act, is to advise and assist each Minister on matters within his/her responsibility as a Minister. As outlined in the Belfast Agreement, the committees also have a scrutiny, policy development and consultation role with respect to the department with which each is associated and have a role in the initiation of legislation.
3. The statutory committees play a pivotal role in ensuring the full and proper accountability of the Executive to the Assembly and effective interaction between committees and their respective departments is an essential ingredient for the provision of accurate, comprehensive and timely information and evidence.
4. The provision of information operates as a two way process; departments providing information to committees and departments seeking comments and observations from committees. The guidelines on timescales, as set out below, have been approved by the Executive and the Assembly Chairpersons' Liaison Group. Departments and committees will endeavor to adhere at all times to the guidance but it is acknowledged that circumstances may arise which require agreement between the relevant Committee Clerk and Departmental Assembly Liaison Officers (DALO) on a timescale appropriate to a particular issue. The development of an effective working relationship between Clerk and DALO is therefore of paramount importance to enable discussion to take place and consensus to be reached on the timescales where the provision of information may not be possible within the timescales contained within this guidance.

#### **Forward work programme**

5. It is essential that committees agree a forward work programme as this is a fundamental building block in the relationship between department and committee, and provides an understanding on both sides of the range of information which is likely to be provided or sought during the period of the programme. The backdrop of an agreed framework can also help foster a relationship in which requests for urgent information are more acceptable when seen within the context of an overall work programme.

6. Statutory committees should be advised regularly of major issues under consideration in a department, to assist them in prioritising their work. Before the beginning of each session the Clerk will consult the DALO about the committee's forward work programme. The DALO should, as far as possible, provide details of any consultation documents, policy reviews, subordinate and primary legislation, with indicative timings, that the department anticipates bringing forward during the session. Once the forward work plan has been agreed by the committee, a copy will be sent to the DALO for information. Should changes be required to an agreed forward work programme there should be consultation between the Clerk and DALO as early as possible to determine the nature of the change and agree the amendments required to the programme. The Clerk will bring any proposed changes/additions to the forward work programme to the attention of the committee for approval.

#### **Consultation with committees on reviews of existing policies and development of new policies**

7. To enable committees to carry out their statutory functions, departments should consult with committees about any review of existing policies and the development of any new policies. This should be done at an early stage in the process, well before publication of consultation documents. The period of time over which such consultations are to take place should be agreed between Clerk and DALO within the context of the forward work programme.

#### **Consultation with committees on public consultation exercises**

8. Departments must include the relevant statutory committees in any public consultation exercise which they undertake and committees must be given the opportunity to submit their views. This would include any consultation on proposals for primary and subordinate legislation (which is the subject of separate guidance). **The committee should receive an advance and embargoed copy of any consultation document a minimum of 3 working days prior to publication.** Where it is not possible to meet this deadline, an alternative timescale will be agreed between committee and DALO through local engagement.
9. Whilst committees will have the opportunity to give their views during the formal consultation process, they may prefer to wait until they see a summary of all responses from consultees before submitting their own comments to the relevant department. Sufficient time must be built in to any consultative process to consider the views submitted and to prepare appropriate summaries of responses for submission to the committee if requested. The timescale for response should be agreed between the Clerk and the DALO.
10. Committees may also choose to be forwarded copies of consultee views as they are received by departments, and to take evidence from stakeholders during the consultation period, prior to the submission of their own comments to the relevant department. In

either case the preferred approach of the committee and the proposed timescale for the committee response should be discussed in advance between the Clerk and the DALO and agreed by the committee.

#### **Attendance of Ministers or officials at committee meetings**

11. The Clerk and DALO should agree as far in advance as possible, and normally at least two weeks in advance, when Ministers or officials are asked to give evidence to a committee or brief a committee. There may, however, be occasions when urgent matters arise and such notice is not possible. In those situations the Clerk and DALO should agree appropriate arrangements. It is recognised that matters can be added to a committee agenda on a routine basis. Committees should take into account the timing of Executive meetings or other major Ministerial commitments when scheduling evidence or briefing sessions. Following agreement between Clerk and DALO, and subject to unavoidable commitments, Ministers and officials should normally make themselves available to the committee.

#### **Provision of papers relating to committee work programme**

12. Departments should normally aim to provide committees with papers relating to agreed forward work programmes, **no later than 5 working days before the relevant committee meeting**. If it is likely that this timescale will not be met, there should be early consultation between DALO and Clerk and careful consideration given to determining the necessary period of extension. Requests for submission of papers on issues in which the committee has expressed an interest will be made by the committee as far in advance as possible and **Clerks will endeavour to submit such requests not less than 4 weeks before the paper is required**. This will be particularly important where extensive information or collation of information from different sources is required.

#### **Provision of papers in relation to committee inquiries**

13. Committees should endeavour to discuss with departments proposed topics for inquiries at an early stage. This will ensure that committees are informed of any similar research that is being conducted by departments, or if a department is about to change the policy / procedure under inquiry. When a committee agrees to initiate an inquiry the departmental Minister should be notified of the committee's intention to undertake the inquiry, be provided with a copy of the inquiry's Terms of Reference and be advised of the closing date for receipt of written submissions.
14. Requests for written submissions in relation to committee inquiries should be submitted to the department as far in advance as possible and departments should be given between **6 and 8 weeks** to respond. Where this is not possible due to the timeframe of the inquiry the timescale for the departmental response should be agreed between the Clerk and DALO.

#### **Responses to queries or correspondence from committees**

15. Committees will often write to departments seeking information about issues which have been raised with them or as a follow up to information that the department has already provided. **Committees should give departments 10 working days notice in which to respond** unless the matter is more urgent or complex in which case the Clerk should agree a response time with the DALO. If it is not possible to provide an answer within that timescale the DALO and Clerk should consider whether an interim response is required and determine a timeframe within which the information will be provided. Details of the revised timeframe should normally be provided to the committee in writing. Committee members should be encouraged to raise constituency matters through existing correspondence arrangements, rather than through the committee to department route.

### **Ministerial Statements**

16. Departments should give committees advance notice of impending Ministerial statements on matters which are within the responsibility of their Minister and relevant to the committee's role
17. Notification of impending oral Ministerial statements should be provided to the Chairperson of the Committee and the Committee Clerk at the same time as notification is given to the Speaker i.e. not less than one sitting day, or in cases of urgency 2<sup>1</sup>/<sub>2</sub> hours, before the statement is due to be made. The notification should be of the fact that the statement is to be made but does not require provision of the text of the statement itself.
18. Notification of impending written Ministerial statements should be provided to the Chairperson of the Committee and the Committee Clerk at the same time as notification is given to the Speaker i.e. no later than 24 hours before it is made public or given, whether or not embargoed, to members of the news media, whichever comes first or in cases of urgency 2<sup>1</sup>/<sub>2</sub> hours. The notification should include a copy of the written statement.

### **Committee press releases and motions**

19. The Committee Clerk should provide the DALO, as soon as possible, with copies of press releases agreed by the committee and of motions which the committee has agreed should be tabled for consideration by the Business Committee.

### **Publication of committee reports**

20. The Clerk will ensure that an embargoed copy of a committee report is provided to the relevant Minister **at least 4 working days before public issue of the report.**

### **Response by Ministers to committee reports**

21. Where a committee has made a report relating to the administration or policy of a department, departments are expected to respond to the committee's recommendations and observations. Departments may make an initial response to the committee's report,

**followed by a full response within 8 weeks of publication of the report.** If additional time is required, this should be discussed between the Clerk and the DALO and the request should be made in writing to the committee by the Minister.