



## Special advisers

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The topic of special advisers in Government has been the focus of attention for several years. Much of the history of their use in Whitehall has been described in Library Research Paper 00/42 *Advisers to Ministers*, but this Standard Note summarises developments since then, specifically the introduction of legislation by the Brown Government to govern their appointment and conduct in the *Constitutional Reform and Governance Act 2010*. This gave a statutory underpinning to the Code of Conduct for Special Advisers introduced in 2001, and the Order in Council which governs their role as temporary civil servants. The Note also looks at trends in numbers of special advisers, based on data from parliamentary questions. The Coalition Government has announced its plans to release such data on a quarterly basis, together with the names of special advisers.

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## 1 The *Constitutional Reform and Governance Act 2010*

On 8 April 2010, the *Constitutional Reform and Governance Act 2010* received Royal Assent; just before the dissolution of the 2005 Parliament. In the Commons, the provisions on special advisers were relatively uncontroversial. The Act received an expedited passage in the Lords and so scrutiny was curtailed. The Act sets out provisions covering a broad range of areas (the civil service, parliamentary standards, financial reporting to parliament, etc.) and it includes three sections in relation to special advisers.

**Section 15** looks specifically at the roles and responsibilities of 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.

This section sets out that special advisers are appointed directly by a minister to “assist” that minister and this language is consistent with changes that were made in July 2005 from special advisers “giving advice only” to special advisers “providing assistance to the Minister”. The appointment must be approved by the relevant Prime Minister or First Minister. The term of office ends with that of the Minister or the relevant election day. Despite the perennial interest from opposition parties in enforcing a cap on the numbers of special advisers appointed by the government, this legislation does not provide for such a limit. Recent appointments by the new Coalition Government also appear to maintain the status quo in terms of the overall number and budget allocation for special advisers.

**Section 16** deals with the annual reporting on the expenditure and numbers of special advisers;

### 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.
- (4) A report under this section must contain information about the number and cost of the special advisers.

Similar requirements are placed on the Executives in Scotland Wales and Northern Ireland, following Government amendments at Commons Committee stage.<sup>1</sup> The Act removed the limits on the numbers of special advisers in devolved executives introduced in 1999.<sup>2</sup> Pressure on the Government to institute a cap appears to have declined since the early 2000s, given that numbers are no longer increasing and that the special 1997 authorisation to direct civil servants given to special advisers at no 10 was removed in 2007. The Government response to the Joint Committee on the draft bill argued that numbers of advisers were in practice limited by the restrictions on Cabinet Ministers in para 3.2 of the *Ministerial Code* to appoint up to two special advisers.<sup>3</sup>

Finally, **Section 8** outlines the specific requirements for a code of conduct for special advisers;

#### 8 Special advisers code

- (1) The Minister for the Civil Service must publish a code of conduct for special advisers (see section 15).

[...]

- (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.

[...]

- (8) The Minister for the Civil Service must lay any special advisers code before Parliament.

[...]

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<sup>1</sup> See [Research Paper 10/18](#) for full details of the debates and changes made at Commons Committee stage  
<sup>2</sup> *Civil Service (Amendment) Order in Council 1999*. Background is given in the Committee on Standards in Public Life Sixth Report Cm 4557 2000., para 6.13. Equivalent provision was made for Northern Ireland in the *Civil Service Commissioners (Northern Ireland) Order 1999*  
<sup>3</sup> Cm 7690, para 216

(11) A special advisers code forms part of the terms and conditions of service of any special adviser covered by the code.<sup>4</sup>

These various provisions put into statutory form guidance applicable to special advisers and the history and development of the guidance is discussed below.

## 2 Background

The role of special and unpaid advisers has been the subject of intense scrutiny for over a decade. Library Research Paper 00/42 *Advisers to Ministers* discusses much of the background to the question of special advisers and in particular the report from the (Neill) Committee on Standards in Public Life *Reinforcing Standards* in 2000 which made a series of recommendations on this issue. There is a good, if detailed overview of the subject in Andrew Blick's *People who live in the dark: the history of the special adviser in British politics*.<sup>5</sup> The draft *Constitutional Renewal Bill*, published in March 2008, as part of the white paper *The Governance of Britain: Constitutional Renewal*,<sup>6</sup> set out proposals to place the employment of special advisers on a statutory basis as part of new civil service legislation. The *Constitutional Reform and Governance Act 2010* provides further clarification on the roles and responsibilities of both government and special advisers themselves in this regard.

Until the relevant sections of the *Constitutional Reform and Governance Act 2010* have been brought into force by a commencement order, special advisers continue to be appointed in accordance with Article 3(2) of the *Civil Service Order in Council 1995* (as amended) for "the purpose of providing assistance to Ministers".<sup>7</sup> They are temporary civil servants and their employment ends at the end of the administration which appointed them. In common with all civil servants they are bound by the *Civil Service Code* (except sections one and five which relate to the impartiality and objectivity of the Civil Service and civil servants and the aspects of paragraph nine which relate to future administrations and potential future Ministers). However, they also differ from the majority of permanent civil servants because they "are exempt from the general requirement that civil servants should be appointed on merit and behave with political impartiality and objectivity".<sup>8</sup>

The responsibilities of, and limits on the activities of special advisers are contained in five separate documents. These documents collectively set the framework within which special advisers operate. The documents are: the *Civil Service Order in Council*; the *Code of Conduct for Special Advisers*; the *Model Contract for Special Advisers*;<sup>9</sup> the *Civil Service Code*;<sup>10</sup> and the *Ministerial Code*.<sup>11</sup> Reference should also be made to the draft Civil Service Bill in 2003-04 for an appreciation of the Blair Government thinking on the role of special advisers<sup>12</sup> and the advancements brought forward in the *Constitutional Reform and*

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<sup>4</sup> [Constitutional Reform and Governance Act 2010](#)

<sup>5</sup> 2004 Politico's Publishing

<sup>6</sup> Ministry of Justice, *The Governance of Britain – Constitutional Renewal*, March 2008, Cm7342 – I-III

<sup>7</sup> Cabinet Office June 2010 *Model Contract for Special Advisers* at <http://download.cabinetoffice.gov.uk/special-advisers/model-contract.pdf>

<sup>8</sup> Cabinet Office June 2010 *Code of Contract for Special Advisers* at <http://download.cabinetoffice.gov.uk/special-advisers/code-of-conduct.pdf>

<sup>9</sup> <http://download.cabinetoffice.gov.uk/special-advisers/model-contract.pdf>

<sup>10</sup> [http://www.civilservice.gov.uk/Assets/cs\\_code\\_tcm6-2444.pdf](http://www.civilservice.gov.uk/Assets/cs_code_tcm6-2444.pdf)

<sup>11</sup> Cabinet Office May 2010 *Ministerial Code* at <http://www.cabinetoffice.gov.uk/media/409215/ministerialcodemay2010.pdf>

<sup>12</sup> *A Draft Civil Service Bill: A Consultation Document*, Cm6373, November 2004

*Governance Act 2010* by the Brown Government which provide legislative and statutory support for recent debates on the matter.<sup>13</sup>

The debate over the powers of special advisers is epitomised by the Public Administration Select Committee (PASC) inquiry of 2001 which called its report *Special Advisers: Boon or Bane?*<sup>14</sup> The report summarised concern about the potential creation of a 'spoils system' of government associated with the American system, and whether the growth of special advisers within No. 10 could be considered a move towards a more presidential style of government.

## **2.1 The draft *Constitutional Renewal Bill***

Gordon Brown undertook to enact civil service legislation and this would include the statutory regulation of special advisers. The Queen's Speech on 6 November 2007 referred to the proposed *Constitutional Reform Bill* as draft, and this was duly published on 25 March 2008 as a white paper and draft bill, *The Governance of Britain: Constitutional Renewal*.<sup>15</sup> The proposals to place the civil service on a statutory footing are discussed in detail in Library Standard Note 2863 *Civil Service Legislation*.

Pre legislative scrutiny of the draft bill was undertaken by a variety of committees, including a specially constituted joint committee of both Houses. PASC held two evidence sessions on aspects of the Draft Bill – they concentrated on matters relating to the Civil Service and reform of the Royal Prerogative. Their report, *Constitutional Renewal: Draft Bill and White Paper*, was published on 4 June 2008.<sup>16</sup> The Committee linked the lack of the cap on numbers of special advisers in the draft bill to the lack of definition about their role. They stated that:

It needs to be absolutely clear in primary legislation that no special advisers should be able to authorise expenditure, or to exercise either management functions or statutory powers. With this added protection, there would be no need for Parliament to control the number of special adviser appointments.<sup>17</sup>

The Joint Committee examined the debate over the role of special advisers, concluding as follows:

296. We agree with the continued treatment of special advisers as temporary civil servants on the grounds that it is preferable for them to work within the same framework as other civil servants. For this reason, we reject the proposal that they be paid from "Short money", which would have the effect of removing them from the ambit of the Civil Service Code. We note the intention set out in the Green Paper to clarify the role of special advisers. On balance, we do not support calls for restrictions on advisers' functions to be put on the face of the Draft Bill. However, we recommend that paragraph 7 of the Code of Conduct for Special Advisers should be amended to make it explicit that special advisers may not authorise expenditure; recruit, manage or direct civil servants; or exercise statutory powers. We recommend that a procedure should be included in the appropriate Code for limiting the numbers of special advisers, preferably not by establishing a cap. We suggest this might be done by confining to

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<sup>13</sup> See Standard Note 2863 *Civil Service Legislation* for background

<sup>14</sup> Public Administration Select Committee, *Special Advisers: Boon or Bane?*, 28 February 2001, HC 293 2000-01

<sup>15</sup> Ministry of Justice, *The Governance of Britain – Constitutional Renewal*, March 2008, Cm7342 – I-III

<sup>16</sup> Public Administration Select Committee, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08

<sup>17</sup> *Ibid*, para 44

Cabinet Ministers (or Ministers in charge of departments) the right to appoint special advisers and by limiting the number of special advisers that each Cabinet Minister should be able to appoint.<sup>18</sup>

The First Civil Service Commissioner, the Committee on Standards in Public Life and the FDA union had argued before the Joint Committee that the draft bill should clarify what special advisers could and could not do.<sup>19</sup> A number of witnesses had suggested that special advisers could be funded from the Short Money allocation given to Opposition parties to support their front bench work. PASC had also floated the idea in its 2001 report *Special Advisers: Boon or Bane?*<sup>20</sup> There was disagreement among Joint Committee members about the question of a cap on the number of advisers, as is evident from the Minutes of Proceedings. The Joint Committee were also not persuaded that there should be any formal parliamentary approval of the Code of Conduct for Special Advisers (para 300).

### **3 The Code of Conduct for Special Advisers**

#### **3.1 Background**

One of the recommendations from the Neill Committee on Standards in Public Life was for a code of conduct for special advisers, to be enforced, it stated, by 'permanent heads of department'.<sup>21</sup> This was first published in July 2001 by the Cabinet Office.

In July 2002, PASC also published "*These Unfortunate Events*": *Lessons of Recent Events at the Former DTLR*.<sup>22</sup> This examined the series of events which occurred at the former Department of Transport, Local Government and the Regions between September 2001 and May 2002, beginning with the email sent on 11 September 2001 by the special adviser, Ms Jo Moore. Although the report did give rise to some wider issues, it primarily focused on communication issues, particularly the handling of departmental announcements. Following publication, the Government established a review into the operation of the Government Information and Communication Service (GICS). The contents and action taken following publication of the Phillis Review, is covered in Library Standard Note SN/PC/2594 *Changes to Government Communications Machinery*.

On 8 April 2003, the Wicks Committee on Standards in Public Life published its ninth report, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service*.<sup>23</sup> The introduction made it clear that the inquiry was being conducted against a background of longstanding tensions between different parts of the executive, which had become more acute since the election of the Labour Government in 1997. As if to confirm the heightened attention, the Phillis Review and the Wicks Committee were separately scrutinising the overlapping responsibilities of the GICS and the Number 10 Communications Directorate at the same time as evidence to the Hutton Inquiry was hearing evidence

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<sup>18</sup> HL Paper 166/HC 551 2007-08

<sup>19</sup> Ibid para 293

<sup>20</sup> HC 293 2000-01

<sup>21</sup> Recommendation 22

<sup>22</sup> Public Administration Select Committee, "*These Unfortunate Events*": *Lessons of Recent Events at the Former DTLR*, 19 July 2002, HC 303 2001-02

<sup>23</sup> Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service*, 8 April 2003

concerning the informality of Government procedures in the context of policymaking towards Iraq.<sup>24</sup>

As well as making reference to the events surrounding the Jo Moore Affair, the opening remarks of the Wicks Committee's report highlighted some of the reasons for the continued interest in the role of special advisers since May 1997:

The number of special advisers has continued to rise – from 34 in 1994 to 78 by 1999-2000 (at the time of the Committee's Sixth Report), to 81 in 2003. Notwithstanding the publication in 2001 of a new Code of Conduct for Special Advisers and a Model Contract for Special Advisers (following recommendations made in the Sixth Report), questions have been asked regularly about the role, responsibilities and accountability of this growing cadre of political appointees, with particular attention paid to the two special advisers in the Prime Minister's Office with 'executive powers', and to one or two unpaid special advisers.

The report from the Committee on Standards in Public Life reiterated the widely held view that "special advisers have a valuable role to play precisely because they are free to act and advise in a way that a politically impartial civil servant cannot" but it did recognise the greater prominence and significance that has been attached to special advisers in Parliament and the media in recent years.<sup>25</sup> In chapter seven of its report, the Wicks Committee considered the status, role, accountability, number and funding of special advisers. Further information on the recommendations of the Committee and the Government's response can be found in Standard Note SN/PC/2863 *The Civil Service Bill 2003-04* and Standard Note SN/PC/2609 *Wicks Committee's report Defining the Boundaries and Government response 2003*.

Briefly, the Committee recommended there be a clear statement of what special advisers could not do and that the Code of Conduct for Special Advisers should continue to list the types of work a special adviser may do at the request of the minister. It also recommended that there should be an annual statement to Parliament setting out details of the special advisers and the Ministers for whom they worked and that the total number of special advisers should be limited by statute in the context of a Civil Service Bill. Finally, it recommended that the Ministerial Code should be amended to make sure that ministers were personally accountable to the Prime Minister and to Parliament for the management and discipline of their special advisers. Where necessary, the Prime Minister should be able to refer the matter for investigation in the same way as an alleged breach of the Ministerial Code. The Government response accepted that it should be the minister who took responsibility:

In its response to the Eighth Report of the Public Administration Select Committee, the Government made it clear that the ultimate responsibility for the discipline of an individual special adviser rests with the Minister who made the appointment. This also applies to the management of individual special advisers. This is on the basis that, unlike other civil servants, special advisers are personal appointments made by individual Ministers. It is, of course, also open to the Prime Minister to terminate

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<sup>24</sup> An Independent Review of Government Communications, chaired by Bob Phillis, January 2004; Report of a Committee of Privy Counsellors, *Review of Intelligence on Weapons of Mass Destruction*, 14 July 2004, HC 898 2003-04

<sup>25</sup> Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service*, 8 April 2003, p43. The sources for the table were HC Deb 31 January 2003 c1956w; 22 January 2001 c469w

employment by withdrawing his consent to the appointment concerned. The Government will make this clear in the next version of the *Ministerial Code*.<sup>26</sup>

The Government accepted that there would be benefit in amending the *Code of Conduct for Special Advisers* to provide a clarification of the relationships between special advisers and permanent officials. It provided a draft of the proposed changes in an Annex. However, it did not accept that individual contracts should stipulate the type of work to be done by a special adviser, preferring to rely on the Code as general guidance. The Government response noted the following in the case of allegations relating to the conduct of a special adviser.

It follows from the Government's response to recommendation 19 that the investigation of an allegation relating to the conduct of an individual special adviser will be a matter for the appointing Minister. In the first instance, the relevant Permanent Secretary would be expected to investigate and make recommendations to the Minister on any disciplinary action but the ultimate responsibility for initiating an investigation and disciplining a special adviser rests with the appointing Minister. The Government agrees with the Committee that it is for the appointing Minister to account to Parliament, as necessary, for the outcome and for the action taken in consequence of an investigation.

The Government committed itself to making revisions to the Ministerial Code which would make it clear that all Ministers are personally accountable to the Prime Minister and to Parliament for the management and discipline of their special advisers and for investigating alleged breaches of the Code of Conduct for Special Advisers. The Government also committed itself to continuing the process of providing annual statements with data on the number and role of special and unpaid advisers in Government. Finally, it agreed to amend the letter of appointment for unpaid advisers so that it included a requirement not to use official resources for party political activity or to undermine the political impartiality of civil servants.

On 4 December 2003, the Government published a revision of its Response to the Wick's Committee, following concern from the Committee on Standards in Public Life about the proposed amendment to the Code set out in the Annex to the Government Response. The Committee was worried that the amendment which had been proposed by the Government would enable special advisers to convey the "instructions" of Ministers to officials. It noted its belief that this change would enhance the position of Special Advisers as well possibly leading to confusion within Departments over issues of accountability.<sup>27</sup> In a letter the then Cabinet Secretary, Sir Andrew Turnbull, confirmed that after "reflecting on the wording", the Prime Minister had decided to delete "instructions" from the amendment to the Code.<sup>28</sup> The Committee welcomed the change as a "constructive development" which it hoped would lead to further reflection by the Government "on those recommendations in the Ninth Report that it felt unable to accept at the time of its response".<sup>29</sup>

### **3.2 Revised Code and Model Contract June 2010**

A revised Code was published in June 2010 to reflect the requirements in the *Constitutional Reform and Governance Act 2010* and to reflect the interests of the new coalition government. The Code suggests that special advisers are "appointed to serve the

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<sup>26</sup> Cm 5964 September 2003

<sup>27</sup> [http://www.public-standards.gov.uk/speeches/9th\\_report\\_chair's\\_statement\\_on\\_Govt\\_response.htm](http://www.public-standards.gov.uk/speeches/9th_report_chair's_statement_on_Govt_response.htm)

<sup>28</sup> [http://www.public-standards.gov.uk/news\\_releases/archive/2003/PN143\\_revisionofgovtsresponsetoninth.htm](http://www.public-standards.gov.uk/news_releases/archive/2003/PN143_revisionofgovtsresponsetoninth.htm)

<sup>29</sup> [http://www.public-standards.gov.uk/news\\_releases/archive/2003/PN143\\_revisionofgovtsresponsetoninth.htm](http://www.public-standards.gov.uk/news_releases/archive/2003/PN143_revisionofgovtsresponsetoninth.htm)

Government as a whole and not just their appointing Minister.”<sup>30</sup> With different special advisers coming from variety of backgrounds being appointed to serve a coalition government, this newly-added provision ensures that special advisers are serving the interests of the whole Government, regardless of the party affiliation of their appointing Minister.

Other new provisions surround the declaration of gifts and hospitality received whilst in service, as well as enhanced language on the standards expected of special advisers in relation to conduct in public life. The Code specifically states that “the preparation or dissemination of inappropriate material or personal attacks has no part to play in the job of being a special adviser as it has no part to play in the conduct of public life. Any special adviser even found to be disseminating inappropriate material will automatically be dismissed by their appointing Minister”. The Chief Press Adviser to Gordon Brown, Damien McBride, had resigned on 11 April 2009 as a result of leaked emails suggesting personal attacks on Opposition figures and the Cabinet Secretary had issued updated guidance to special advisers which they were required to sign.<sup>31</sup>

Finally, the revised Code updates the section on ‘Relations with the Permanent Civil Service’ in order to comply with the *Constitutional Reform and Governance Act 2010*’s requirement that special advisers may not “authorise the expenditure of public funds; exercise any power in relation to the management of any part of the civil service of the State; and otherwise exercise any power conferred by or under this or any other Act or any power under Her Majesty’s prerogative.”<sup>32</sup>

#### 4 Unpaid advisers

Although most attention has been focused on the role of special advisers, the Ministerial Code also makes passing reference to the appointment of unpaid advisers. The 2005 version of the Code included more detailed information on unpaid advisers, and using the 2005 guidelines at the time the Committee on Standards in Public Life defined the main requirements of unpaid advisers as follows:

Appointees provide advice to Ministers in their ministerial capacity;

Prior written approval of the Prime Minister is required;

Such appointments are **exceptional**;

Appointments **carry no remuneration** or reimbursement from public funds;

The appointment is a **personal appointment** by the Minister;

There is **no contractual relationship** with the department;

Ministers must ensure **no conflict of interest** with advisers’ private concerns;

**A letter of appointment** must be issued by the employing Minister making this clear;

Aside from **accommodation costs** an unpaid adviser should constitute no cost to the public purse; and

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<sup>30</sup> Cabinet Office June 2010 *Code of Contract for Special Advisers* at <http://download.cabinetoffice.gov.uk/special-advisers/code-of-conduct.pdf>

<sup>31</sup> “Email smears a “serious breach”, *BBC News*, 15 April 2009, [on 7 October 2009]

<sup>32</sup> *Constitutional Reform and Governance Act 2010*

The Official Secrets Act and Business Appointment Rules apply.<sup>33</sup>

The Committee report recommended as follows in relation to unpaid special advisers:

- The Ministerial Code provides that unpaid advisers are identified on the basis of a letter of appointment from the employing Minister which sets out the conditions contained in the box above (at para 7.50). However, it is clear that this approach is not being applied evenly and that individuals exist who apparently satisfy the criteria set out in the box but who have not been defined as an unpaid adviser. This is highly unsatisfactory. **We recommend** that the term, unpaid adviser, should cover any person providing, on an unpaid basis, advice to any Minister or representing any Minister in this country or abroad on a recurring or continuous basis; and
- There is nothing in the Ministerial Code which requires unpaid advisers to comply with the Code of Conduct for Special Advisers. **We recommend** that the relevant essential elements of the Special Adviser's Code – that is, the requirement to uphold the political impartiality of civil servants and the requirement not to use official resources for party political activity – should be included in the letter of appointment.

The Government response accepted these recommendations, but noted that there was a wide range of unpaid advice available to ministers, and not all of these sources should be treated as special advisers:

Where an adviser is acting on similar terms to a special adviser but on an unpaid basis then they should conduct themselves as if they were a special adviser. However, it should also be remembered that there is a wide range of unpaid advice available to Ministers including advice from members of NDPBs, task forces and other short-term reviews. The Government does not believe it would be appropriate for these advisers to be covered by the *Ministerial Code*.

While relevant changes were made to the Ministerial Code issued in July 2005, any specific attention to unpaid advisers has been all but left out of the 2007 and 2010 versions of the Ministerial Code.<sup>34</sup> The current Code simply ensures that all special advisers (whether paid or unpaid) are appointed “under the terms and conditions set out in the *Model Contract for Special Advisers* and the *Code of Conduct for Special Advisers*”.<sup>35</sup>

Particular attention was paid to the role of Lord Birt No. 10 Downing Street until his resignation in 2006. The following Parliamentary answer provides information about his role:

**Lord Hanningfield** asked Her Majesty's Government:

What are the terms of reference of the Prime Minister's strategy adviser, the Lord Birt.  
[HL610]

**Lord Bassam of Brighton:** Lord Birt is the Prime Minister's unpaid strategy adviser. He provides the Prime Minister and other Cabinet Ministers with private advice on a

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<sup>33</sup> Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service*, 8 April 2003, p51

<sup>34</sup> For more details, see Standard Note no 3750 *The Ministerial Code*

<sup>35</sup> Cabinet Office May 2010 *Ministerial Code* at <http://www.cabinetoffice.gov.uk/media/409215/ministerialcodemay2010.pdf>

range of issues. Lord Birt is also a member of the Cabinet Office Strategy Board and the Civil Service Reform Programme Board.<sup>36</sup>

Reports produced by Lord Birt were released under the Freedom of Information legislation by the Cabinet Office, along with his terms of appointment. The Cabinet Office website stated the following:

Lord Birt, the Prime Minister's Strategy Adviser, provides confidential advice to the Prime Minister and other Cabinet Ministers on a range of issues. His work has included reports on London, Drugs, Health, Education, Transport and Crime. The project teams for these reports included departmental officials and external advisers. All but the Crime report was produced in conjunction with the Prime Minister's Strategy Unit. Each report was produced in two phases. Phase One set out the evidence and analysis of the issues. Phase Two set out policy advice and recommendations. We are publishing the evidence and analytical phases of each of the reports (in the case of the London report, the analytical and final reports have already been published). These reports were intended to provoke discussion and contribute to debate across Government. They are not statements of Government policy.<sup>37</sup>

## 5 Numbers of special advisers

The growth in the number and expenditure on special advisers was an important factor in debate on special advisers since the 1990s. The Neill Committee on Standards in Public Life had recommended in 2000 a cap on the overall number of special advisers.<sup>38</sup> The previous Government's response to the Neill Committee report had accepted the need for a cap, in the context of legislation on the civil service, as follows:

The Government accepts that an overall limit on the number of special advisers should be included in Civil Service legislation. Once that legislation has been enacted, increases in the limit will require the consent of both Houses of Parliament. The Government remains committed to the introduction of such legislation (see the response to recommendation 17 above). It will review the appropriate definition and level of the limit when drawing up the legislation. In the meantime, the appointment of special advisers will continue to be regulated by Order in Council on the basis set out above.<sup>39</sup>

However, in the Government response to the Committee on Standards in Public Life report in 2003, it no longer accepted the case for a cap on the number of special advisers:

R22. (a) The total number of special advisers should be contained in statute, with an upper limit subject to alteration by resolution approved by both Houses of Parliament. The issue of legislation is dealt with in response to recommendation 6. However, the Government does not believe that the issue of special advisers can be considered as a numerical issue. The issue is about being transparent about accountability, roles and responsibilities and numbers. The Government also participates in regular Parliamentary debates on this issue.<sup>40</sup>

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<sup>36</sup> HL Deb 4 July 2005 c61WA

<sup>37</sup> <http://www.cabinetoffice.gov.uk/publicationscheme/requests.asp>

<sup>38</sup> Cm 4557 January 2000

<sup>39</sup> Cm 4817 July 2000 Response to Recommendation 21

<sup>40</sup> Cm 5964 September 2003 Response to Recommendation 22

Since July 2002, the Prime Minister has provided information to the Commons on an annual basis detailing the names, expertise, pay range, number and cost of special advisers.<sup>41</sup> Information for earlier years has been extracted from parliamentary answers and summarised by the Committee on Standards in Public Life in its 2003 report.<sup>42</sup> Each answer gives the number of special advisers in post in July annually and offers a pay total figure which relates to the previous year.<sup>43</sup>

### Special advisers 1994/95 to 2009/10

	<b>Total</b>	<i>of which:</i>			
<b>Year (July)</b>		<b>No. 10</b>	<b>Departments</b>	<b>Special Adviser Pay £m</b>	<b>Change in pay on previous year (%)</b>
1994/95	34	6	28	1.5	-
1995/96	38	8	30	1.5	0
1996/97	38	8	30	1.8	20
1997/98	70	18	52	2.6	44
1998/99	74	25	49	3.5	35
1999/00	78	26	52	4	14
2000/01	79	25	54	4.4	10
2001/02	81	26	55	5.1	16
2002/03	70	27	43	5.4	6
2003/04	72	26	46	5.3	-2
2004/05	84	28	56	5.5	4
2005/06	82	25	57	5.9	7
2006/07	68	20	48	5.9	0
2007/08	73	23	50	5.9	0
2008/09	74	25	49	5.9	0
2009/10	***	***	***	6.8	15
2010/11	68**	22*	46	4.9m****	

Notes: \*The total number of "No. 10" advisers in 2010/11 include those appointed by the Prime Minister (18) and those appointed to serve the Deputy Prime Minister (4).

\*\*The 2010/11 totals include 5 positions listed as 'vacant' when the Written Ministerial Statement was made on 10 June 2010.

\*\*\*Figures are not available as to the exact numbers of advisers at the dissolution of Parliament in 2010. A separate entry has been made for the expenditure value, though, as this must be distinguished from the number of special advisers appointed under the new coalition government.

\*\*\*\* In the June 2010 statement an estimate was given of the expected pay bill for 2010-11 from 12 May to 31 March 2011, and the 28 October 2010 statement gave a paybill cost, including severance, for the period 1 April 2010 to 12 May 2010 of £2.1m, of which £1.8m was severance.

There is a discontinuity in the calculation of the total pay bill between 2001/02 and 2002/03. Parliamentary answers since then have included the total cost, including salary, severance pay and estimate of pension costs. Previously, the pay bill only was included.

<sup>41</sup> HC Deb 21 July 2005 c160WS. HC Deb 22 July 2004 c 466W – 470W: HC Deb 16 July 2003 c328 – 330W; HC Deb 24 July 2002 c1372 – 1374W; Numbers in this table include special advisers in No. 10 who are paid above the pay bands given, and members of the Council of Economic Advisers

<sup>42</sup> Committee on Standards in Public Life, *Defining the Boundaries within the Executive: Ministers, Special Advisers and the Permanent Civil Service*, 8 April 2003, p50

<sup>43</sup> See HC Deb 22 January 2001 c469w

Numbers in this table include special advisers in No. 10 who are paid salaries above the normal pay band. They also include members of the Council of Economic Advisers employed on special adviser terms, where information is given in the relevant parliamentary answers or written ministerial statements.<sup>44</sup>

As in previous editions, the Ministerial Code issued in May 2010 noted the following:

3.2 With the exception of the Prime Minister and the Deputy Prime Minister, Cabinet Ministers may each appoint up to two special advisers (paid or unpaid). The Prime Minister may also authorise the appointment of one special adviser by Ministers who regularly attend Cabinet. Where a Minister has additional responsibility additional advisers may be allowed. All appointments, including exceptions to this rule, require the prior written approval of the Prime Minister, and no commitments to make such appointments should be entered into in the absence of such approval. All special advisers will be appointed under terms and conditions set out in the *Model Contract for Special Advisers* and the *Code of Conduct for Special Advisers*.<sup>45</sup>

However, the authorisation of an extra adviser for a minister with additional responsibilities appears to be new, as similar phrasing did not appear in the *Ministerial Codes* issued in 2005 and 2007.

## 6 Special Advisers Code and Order in Council 2005

As noted above, the Government response to the Wicks Committee accepted the need for greater clarity of their status including ministerial responsibility for conduct and discipline in the next version of the *Code of Conduct for Special Advisers*. The Ninth Report of the Committee on Standards in Public Life had noted that the Civil Service Order in Council relating to special advisers of 1995 had referred to their role as one of “giving advice only”. This was inconsistent with the Code of Conduct for Special Advisers which listed activities that special advisers could be asked to do by their Ministers. These activities went far beyond only giving advice. PASC had therefore recommended the wording “providing assistance” in its report on a draft Civil Service Bill in 2004.<sup>46</sup>

It emerged in July 2005 that the Government had changed the terms of the Order in Council which governs the role of special advisers and was drafting a new Code of Conduct and new Model Contract for special advisers. Then Prime Minister, Tony Blair, announced the changes in a parliamentary written statement on 21 July 2005.<sup>47</sup> The Prime Minister stated:

I have today placed in the Libraries of the both Houses copies of the revised code of conduct for special advisers and the revised model contract for special advisers. These reflect commitments given by the Government to the Public Administration Committee and the Committee on Standards in Public Life. The civil service Order in Council governing the appointment of special advisers has also been amended to the effect that special advisers are appointed to assist Ministers.

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<sup>44</sup> These are; [HC Deb 10 June 2010 c33-34WS](#); HC Deb 16 July 2009 c73-76WS; HC Deb 22 July 2008 c100WS; HC Deb 22 November 2007 c147-WS; HC Deb 24 July 2006 c86WS; HC Deb 21 July 2005 c160WS. HC Deb 22 July 2004 c 466W – 470W: HC Deb 16 July 2003 c328 – 330W; HC Deb 24 July 2002 c1371 – 1373W

<sup>45</sup> [Ministerial Code](#) May 2010

<sup>46</sup> HC 128 2003-4 January 2004. For background see Library Standard Note no 2863 *The Civil Service Bill 2003-04*

<sup>47</sup> HC Deb 21 July 2005 c162WS Dep 05/1001 (Code of Conduct for Special Advisers) and Dep 05/1002 (Model Contract for Special Advisers). The Code can be found at [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/publications/pdf/code\\_conduct\\_special\\_advisers.pdf](http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/code_conduct_special_advisers.pdf)

The Government therefore changed the wording of the Model Contract for Special Advisers in July 2005 from special advisers “giving advice only” to special advisers “providing assistance to the Minister”. The new Model Contract for Special Advisers published by the coalition government in June 2010 has not altered this wording and has maintained the previous government’s position that special advisers are to “provide assistance to the Minister”.

The manner of the change upset the Committee of Standards in Public Life, whose then chairman, Sir Alastair Graham, issued two press releases on 19 and 21 July 2005, quoting from his correspondence with the Cabinet Office.<sup>48</sup>

There was a starred question debate in the House of Lords on 7 November 2005 on the number and role of special advisers.<sup>49</sup> Several peers expressed concern that the role of special advisers was being extended in a way that usurped the role of permanent civil servants..<sup>50</sup>

## 7 Special advisers and the Brown Government

Former Prime Minister, Gordon Brown, took office on 27 June 2007. The afternoon press briefing for that day noted that “In his first act as Prime Minister he revoked the Orders of Council granting powers to special advisers to give instructions to civil servants.”<sup>51</sup> This was a reference to the revoking of the powers given to Tony Blair in 1997 to appoint up to three special advisers with executive powers.

On the same day Mr. Brown announced a restructuring of positions within No. 10 and the Cabinet Office. He brought in a combination off career civil servants and special advisers to No. 10. He appointed a career civil servant, Tom Scholar, as Chief of Staff and Principal Private Secretary, so ending the division of roles under Mr Blair, whereby Jonathan Powell as special adviser had acted as Chief of Staff. However, the Deputy Chief of Staff, Gavin Kelly, was a special adviser. Mr Scholar was subsequently replaced by Jeremy Heywood, who had initially been appointed as an additional permanent secretary for domestic policy at the Cabinet Office in June 2007. Mr Heywood became chief of staff in January 2008, as a civil servant, not a special adviser.<sup>52</sup>

The Prime Minister’s spokesman was a civil servant, Michael Ellam, but Damien McBride was appointed as a special adviser on political press issues. Mr McBride had acted as Mr Brown’s special adviser when Chancellor. Mr Brown’s director of government relations, Sue Nye, was a special adviser as was the new head of the no 10 policy unit, Dan Corry, formerly Chair of the Council of Economic Advisers at the Treasury. A former Treasury special adviser, Spencer Livermore, was appointed as Director of Political Strategy on special adviser terms. There was some press comment to the effect that the new appointments had several links with the Treasury and with the pressure group IPPR.<sup>53</sup>

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<sup>48</sup> “Revision of the Code of Conduct for Special Advisers” Committee on Standards in Public Life PN 21 July 2005

<sup>49</sup> HC Deb 7 November 2005 c482-98

<sup>50</sup> HL Deb 7 November 2005 c496

<sup>51</sup> No. 10 Downing Street Afternoon Press Briefing for 27 June 2007 at <http://www.number-10.gov.uk/output/Page12162.asp>. The relevant Order in Council is the *Civil Service (Amendment)(No 2) Order in Council 2007*, made on 28 June 2007. This Order did not make amendments to the new power given to special adviser to assist ministers in the Order in Council amendment made in 2005 by Mr Blair

<sup>52</sup> “Brown calls up big hitter to restore order” 24 January 2008 *Financial Times*

<sup>53</sup> “Brown to put civil servants back at heart of Government” 7 June 2007 *Daily Telegraph*

Changes were also made to the machinery of government, as the Delivery Unit moved to the Treasury and the Strategy Unit reported to the Minister for the Cabinet Office:

**Mr Heald:** To ask the Prime Minister if he will make a statement on the future of the Prime Minister's Delivery Unit and Strategy Unit within the Cabinet Office. [146875]

**Edward Miliband:** I have been asked to reply.

The Prime Minister's Delivery Unit will report jointly to the Prime Minister and to the Chancellor and will be based in the Treasury. The Strategy Unit will continue to be based in the Cabinet Office and will report to the Prime Minister through the Minister for the Cabinet Office.<sup>54</sup>

The Green Paper *The Governance of Britain* was published in July 2007.<sup>55</sup> It contained commitments to bring forward legislation on the civil service and to include within this legislation the regulation of special advisers:

45. Amongst other matters, the legislation will clarify the legitimate and constructive role of Special Advisers within government. Having Special Advisers allows Ministers to get the political advice they need, and reinforces the political impartiality of the permanent Civil Service by clearly distinguishing the sources of political and non-political advice.

46. It is important that the boundaries of the role of Special Advisers are made clear. Article 3(3) of the Civil Service Order in Council 1995 (as amended in 1997) allowed the Prime Minister to appoint up to three Special Advisers in 10 Downing Street who were not subject to the general restriction that their role is to provide assistance to a Minister, and are allowed to give orders to civil servants.

47. The Government believes that it is inappropriate for even a limited number of Special Advisers to have such a role and has revoked these provisions by an Order in Council. This will be made permanent in the forthcoming legislation.

There was no commitment in the Green Paper to limit the role of special advisers to advice and not assistance, and no commitment to include a limit on the numbers of special advisers in the proposed civil service legislation.

On 22 November 2007 a written ministerial statement was issued giving the list of special advisers appointed under the Brown Government. There had been a reduction in the number of special advisers in both No. 10 and in the Treasury, since at this point only one member of the Council of Economic Advisers had been appointed.<sup>56</sup> At the same time a revised Code of for Special Advisers and a revised Model Contract was published.<sup>57</sup> There were no major changes in the revisions and there has been no change in the Order in Council setting out the role of special advisers. The revision omits the justification for specialist special advisers in the 2005 version and promotes their use as 'an additional resource for the Minister, providing assistance from a standpoint that is more politically committed and politically aware than would be available to a Minister from the permanent civil service' (para 2). The twelve types of work suitable for a special adviser remain the same.

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<sup>54</sup> HC Deb 16 July 2007 : c61w

<sup>55</sup> Cm 7170 Ministry of Justice. For further details see Library Research Paper 07/72 *The Governance of Britain Green Paper*

<sup>56</sup> HC Deb 22 November 2007 c147WMS-150W. For CEA, see "Two's a crowd" 26 October 2007 *Financial Times*

<sup>57</sup> Dep 2007/0134, available on Cabinet Office website at [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/special\\_advisers/code/code.aspx](http://www.cabinetoffice.gov.uk/propriety_and_ethics/special_advisers/code/code.aspx)

## 8 Special advisers and the Coalition Government

The new coalition government has, thus far, made a few minor changes to the way in which the Government approaches the question of special advisers. As previously stated, these changes help to bring the various guidance in line with the requirements of the *Constitutional Reform and Governance Act 2010*. A new [Code](#) and [Model Contract for Special Advisers](#) were issued in June 2010 and are on the Cabinet Office website.

On 10 June 2010 the Prime Minister provided a written ministerial statement with the names and cost allocations for the Coalition's special advisers. As compared to the outgoing government, the Prime Minister appointed five fewer special advisers within No. 10 (22 as opposed to 27) and this number reflects the fact that there are 18 advisers appointed within the Office of the Prime Minister and four advisers appointed to serve the Office of the Deputy Prime Minister. The Prime Minister also appointed three fewer special advisers to serve departmental ministers (46 as opposed to 49), bringing the total number of special advisers to 68. This number was matched during the 2006/2007 session and all other years from 1997 to present have seen the number of special advisers ranging from 70 to 84.

There has been some comment as to the appointment of former MPs as special advisers. The list issued by the Coalition Government in June 2010 included Liberal Democrats Julia Goldsworthy and Willie Rennie, both unpaid.<sup>58</sup> The Coalition Government continued to make appointments to the Council of Economic Advisers. Media interest was focused on the appointment of the former editor of the News of the World Andy Coulson as an adviser to the Prime Minister at a salary of £140,000.<sup>59</sup> There have been examinations of how coalition politics have made an impact on the use of advisers at no 10.<sup>60</sup>

On 1 September 2010 Christopher Myers, a special adviser to William Hague, Foreign Secretary and First Secretary resigned following media speculation on his relationship with Mr Hague. Mr Hague also made a statement denying any impropriety.<sup>61</sup> There continued to be media interest in the fact that Mr Hague had appointed three special advisers since his appointment to the Government.<sup>62</sup>

On 28 October 2010 there were written ministerial statements in both Houses providing an updated list of special advisers within in each department.<sup>63</sup> The information was also made available on the no 10 website.<sup>64</sup> There are now 24 special advisers listed as working either for the Prime Minister or Deputy Prime Minister and a total of 71 advisers including two appointments to the Council of Economic Advisers. Both the Secretaries of State for Defence and for Foreign Affairs have three special advisers each.

David Cameron announced that for the first time departments were publishing on their websites [details of gifts and hospitality received by their special advisers during the period 13 May to 31 July](#). This information would also be updated on a quarterly basis.

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<sup>58</sup> According to the written ministerial statement of 28 October 2010, Julia Goldsworthy will be paid from November 2010. Previously, she had been in receipt of a resettlement grant, having lost her seat in the Commons in May 2005.

<sup>59</sup> "David Cameron's PR director, Andy Coulson, paid £140,000" 10 June *BBC News*

<sup>60</sup> Coalitions hundred days: bridging the gap 18 August 2010 *Guardian*

<sup>61</sup> "William Hague's adviser, Christopher Myers, resigns" 1 September 2010 *BBC News*

<sup>62</sup> "Speculation, lurid sex claims and Mr Hague's very public outpouring" 2 September 2010 *Guardain*

<sup>63</sup> HC Deb 28 October 2010 c19-22WMS

<sup>64</sup> <http://www.number10.gov.uk/news/statements-and-articles/2010/10/written-ministerial-statement-special-adviser-numbers-and-costs-56277>