



House of Commons
Public Administration
Select Committee

**Ministerial
Accountability and
Parliamentary
Questions:
Government Response
to the Committee's
Third Report**

**First Special Report of
Session 2003–04**

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The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and the committee shall consist of eleven members.

Current membership

Tony Wright MP (*Labour, Cannock Chase*) (Chairman)
Mr Kevin Brennan MP (*Labour, Cardiff West*)
Annette Brooke MP (*Liberal Democrat, Mid Dorset and Poole North*)
Mrs Anne Campbell MP (*Labour, Cambridge*)
Sir Sydney Chapman MP (*Conservative, Chipping Barnet*)
Mr David Heyes MP (*Labour, Ashton under Lyne*)
Mr Kelvin Hopkins MP (*Labour, Luton North*)
Mr Ian Liddell-Grainger MP (*Conservative, Bridgwater*)
Mr Gordon Prentice MP (*Labour, Pendle*)
Hon Michael Trend, CBE MP (*Conservative, Windsor*)
Mr Brian White MP (*Labour, Milton Keynes North East*)

Powers

The committee is one of the select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/public_administration_select_committee.cfm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Philip Aylett (Clerk), Clive Porro (Second Clerk), Lucinda Maer (Committee Specialist), Jackie Recardo (Committee Assistant), Jenny Pickard (Committee Secretary) and Phil Jones (Senior Office Clerk).

Contacts

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First Special Report

The Public Administration Select Committee reported to the House on *Ministerial Accountability and Parliamentary Questions* in its Third Report of Session 2003–04, published on 12 February 2004 as HC 355. The Government's Response to the Report was received on 15 October 2004 and is appended.

Appendix

Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Third Report of Session 2003–04

The Government welcomes the Third Report of Session 2003–04 from the Public Administration Select Committee, the latest in a series of reports on Ministerial Accountability and Parliamentary Questions. The Government welcomes the Committee's acknowledgement that there is a greater presumption to openness within Government as a result of the introduction of the Code of Practice on Access to Government Information. The implementation of the Freedom of Information Act in January next year will, as intended, bring still further openness to Government. Departments are currently paying particular attention to their implementation plans so as to achieve a smooth transition to the new entitlements and responsibilities under the Act.

Access to information

1. We would expect the monitoring of requests under the Freedom of Information Act to be much more rigorous than appears to have been the case under the Code of Practice on Access to Government Information and so recommend. (Paragraph 9)

As the Committee recognises the Freedom Of Information Act is fundamentally blind to those requesting information. All requests to departments for information will be considered against the new legislation regardless of whether the Act is cited in the request or not. The Act of itself does not require a monitoring regime. However the Department for Constitutional Affairs has recognised that Ministers and MPs will want to monitor central government's compliance with the Act, and a basis for such monitoring has recently been agreed with other Departments. The Department for Constitutional Affairs is recommending that all departments should establish effective arrangements for tracking of Freedom Of Information Act requests, which will meet the annual monitoring criteria.

2. With the advent of the Freedom of Information Act, we recommend that the Government should give careful consideration to how best it might remedy the current, anomalous situation concerning the right of review and how the analogous rights of appeal in the new FOI regime should apply. We also recommend that in developing its guidance on the implementation of the FOI Act the Government should ensure clear advice is provided on the handling of Parliamentary Questions. (Paragraph 13)

The Government acknowledges that there has been some concern in Parliament that the implementation of the Freedom of Information Act might leave Members disadvantaged, in comparison to citizens, in obtaining information from Government. The Government is determined that greater access to information for the citizen should do nothing to undermine the crucial role of Parliament in holding Government to account.

Under the Freedom of Information Act, individuals who are dissatisfied with the response they receive from a public authority can in the first instance seek an internal review of the response from the authority or department. If they remain dissatisfied they can apply to the independent Information Commissioner for a review. Should the matter remain unresolved a further right of appeal against the Commissioner's decision can be made to the Information Tribunal. Accordingly the Government believes that the review system provides a proportionate and robust system for independent review (separate from the original department should that be needed).

A Code of Practice providing guidance to all public authorities (as required by Section 45 of the Act) will include advice on procedures for dealing with complaints about the handling of requests for information. This will make clear that there should be no inconsistencies between the provision of information in answer to Parliamentary Questions and information given to citizens under the Act. Where a member is dissatisfied with the answer to their Parliamentary Question there are well-established parliamentary routes Members may follow such as: tabling further Questions; seeking to raise the issues on the Adjournment; or complaint to the Public Administration Committee, which may seek to follow up the refusal with Ministers. Alternatively they may write to the appropriate Minister expressing their concern and setting out the information they are seeking. The Code will make clear that such correspondence shall be treated by departments as a new request for information requiring a full internal review and fresh decision. The request will attract all the provisions and appeal mechanisms afforded by the FOIA, including if necessary, an appeal to the Information Commissioner. Any investigation by the Information Commissioner will therefore be related to the correspondence and not extend to the Answer to the Parliamentary Question or to any other parliamentary proceedings which are protected by Parliamentary Privilege. In addition the Cabinet Office plans to issue revised Guidance To Officials On Drafting Answers To Parliamentary Questions taking account of the Freedom Of Information Act.

The Government expects that the Committee and the House authorities will wish to keep under review the relationship between the pattern of ministerial answers and the operation of rules about tabling Questions on a similar topic where a department has refused to answer the original question.

3. We recommend that where there are developments with regard to freedom of information either in a specific policy area or more generally, departments should announce the policy shift in a written ministerial statement to enable Members to re-table Questions which Ministers had previously refused to answer if they so wish.
(Paragraph 16)

The Government notes this recommendation. The Government attaches the highest importance to the duty of Ministers to provide full and accurate information to Parliament, and expects policy changes to be announced to Parliament in the normal way. As the

Ministerial Code makes clear Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest. We have brought this recommendation to the attention of departments.

Citing the relevant exemption

4. We recommend that departmental policies, practices and conventions should conform to the requirements of the Code of Practice on Access to Government Information. If they cannot be justified under the exemptions provided for by the Code they should be discontinued. (Paragraph 20)

The Government agrees with the Committee on this recommendation. The Government welcomes the Committee's endorsement of the Cabinet Office's revised Guidance to Officials on Drafting Answers to Parliamentary Questions issued in response to the Committee's previous report which makes clear that where information is being withheld the appropriate exemption should be cited. In addition and in preparation for the implementation of the Freedom Of Information Act from January 2005, the Department for Constitutional Affairs will give guidance on applying exemptions under the Act and the Cabinet Office will update their Guidance to Officials on Drafting Answers to Parliamentary. This will maintain the approach that exemptions must be cited for each situation where information is not provided in the Parliamentary Answer.

Coordinated replies

5. We recommend that where a department replies to a Parliamentary Question, the Minister should be responsible for the accuracy and relevance of the answer to his department, whether or not the same question has also been asked of other departments. (Paragraph 26)

The Government agrees with this recommendation. Under the terms of the Ministerial Code and a resolution of the House, Ministers are accountable to Parliament for the policies, decisions and actions of their departments. This includes accountability for the accuracy and relevance of answers provided to Parliamentary Questions. Answers to Parliamentary Questions are drafted in accordance with the requirements of the Ministerial Code, the Civil Service Code and Guidance to Officials on Drafting Answers to Parliamentary Questions. Departments liaise with each other from time to time where Parliamentary Questions are tabled to several departments but this does not cut across the line of ministerial accountability which is that it is for individual Ministers to decide on the final content on an answer to a Parliamentary Question.

6. We recommend that, in answering Questions where such an exemption applies, Ministers should apply a harm test and not simply a class exemption to the information requested. (Paragraph 27)

The Government notes the recommendation as it applies to the current Code of Practice on Access to Government Information. Under the terms of the Freedom Of Information Act, exemptions under the Act are either absolute exemptions or subject to a public interest test. In the latter case if the public interest in releasing the information outweighs the public interest in withholding it the information must be disclosed. The Department

for Constitutional Affairs' guidance on the Act will make clear to officials which exemptions are absolute and which are subject to a public interest test.

The public record and referral to the Internet

7. We recommend that all departmental guidance should include best practice on referral to the Internet in answers to Parliamentary Questions. (Paragraph 30)

The Government agrees that when Departments refer in their answer to information on the Internet it is best practice, wherever possible, to provide a copy of the material to the MP or Peer tabling the questions asked, and to provide a copy to the House Libraries. Departments have been reminded of this best practice and the need to update their internal guidance accordingly.

The Committee also reported concerns about the frequency of "I will write" Answers and the accessibility of the subsequent substantive responses. It welcomed the commitment by the Leader of the House of Commons to look into this. The Leader of the House of Commons made a Written Ministerial Statement on 21 July introducing new arrangements for reducing the number of "I will write" replies and for increasing the accessibility of the substantive responses (Official Report, 21 July 2004 col 35WS).

Comparison of departmental guidance

8. We recommend that the Cabinet Office undertake a regular audit of the material produced by departments to ensure consistent application of central guidance and as a means of disseminating examples of best practice by individual departments across Whitehall. (Paragraph 37)

The Cabinet Office Guidance To Officials On Drafting Answers to Parliamentary Questions will be revised to take account of the Freedom Of Information Act. Ministers are responsible for the guidance issued within their departments and for ensuring that it is consistent with legislation and any central guidance. For this reason, the Government does not believe that it would be appropriate for the Cabinet Office to seek to audit departmental guidance.

Reports from the Public Administration Select Committee since 2001

Session 2003–04

First Report	A Draft Civil Service Bill: Completing the Reform	HC 128–I
Second Report	The Work of the Committee in 2003	HC 229
Third Report	Ministerial Accountability and Parliamentary Questions	HC 355 (<i>HC 1262</i>)
Fourth Report	Taming the Prerogative: Strengthening Ministerial Accountability to Parliament	HC 422 (<i>Cm 6187</i>)
Fifth Report	A Matter of Honour: Reforming the Honours System	HC 212–I
First Special Report	Ministerial Accountability and Parliamentary Questions: Government Response to the Committee's Third Report of Session 2003–04	HC 1262

Session 2002–03

First Special Report	The Public Service Ethos: Government's Response to the Committee's Seventh Report of Session 2001–02	HC 61
First Report	Ministerial Accountability and Parliamentary Questions: The Government Response to the Ninth Report from the Committee (Session 2001–02)	HC 136
Second Report	The Work of the Committee in 2002	HC 447
Third Report	Ombudsman Issues	HC 448 (<i>Cm 5890</i>)
Fourth Report	Government By Appointment: Opening up the Patronage State	HC 165–I
Fifth Report	On Target? Government By Measurement	HC 62–I (<i>HC 1264</i>)
Sixth Report	On Target? Government By Measurement: the Government's Response to the Committee's Fifth Report	HC 1264

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First Report	Public Participation: Issues and Innovations: The Government Response to the Committee's Sixth Report of Session 2000–01	HC 334
Second Report	The Ministerial Code: Improving the Rule Book: The Government Response to the Committee's Third Report of Session 2000–01	HC 439
Third Report	Special Advisers: Boon or Bane: The Government Response to the Committee's Fourth Report of Session 2000–01	HC 463
Fourth Report	Ministerial Accountability and Parliamentary Questions: The Government Response to the Committee's Second Report of Session 2000–01	HC 464
Fifth Report	The Second Chamber: Continuing the Reform	HC 494–I (<i>HC 794</i>)

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Sixth Report	The Second Chamber: Continuing the Reform: The Government Response to the Committee's Fifth Report	HC 794
Seventh Report	The Public Service Ethos	HC 263-I (<i>HC 61</i>)
Eighth Report	"These Unfortunate Events": Lessons of Recent Events at the Former DTLR	HC 303-I (<i>Cm 5756</i>)
Ninth Report	Ministerial Accountability and Parliamentary Questions	HC 1086 (<i>HC 136</i>)

The response to the report is printed in brackets after the HC printing number.