IMPROVING GOVERNANCE

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Executive Summary

Government post-Brexit will face sustained and difficult challenges as the UK adjusts to its new situation. Yet these challenges risk being exacerbated by fundamental changes in UK political debate that are affecting the perceived legitimacy and effectiveness of the system and structures of government. These include erosion of the clear distinction entrenched for the last 150 years between political choices by elected representatives and impartial administration by the civil service; the disruption of traditional deliberative processes by digital and social media; and increased centralisation of decision-making in No. 10 Downing Street combined with inadequate scrutiny of that decision-making either by the Cabinet or by Parliament.

The centralisation of executive power reduces its perceived legitimacy across the UK, with devolved government in Scotland and Wales seen as contingent on the Westminster Parliament and Northern Ireland under control by central government. Fiscally, the UK has become the most centralised democratic country in the world. As government faces up to the challenge of unwinding membership of the legal and regulatory framework developed during 45 years of EU membership, it is vital that the UK's political structures restore their legitimacy and efficiency.

Necessary reforms start with greater transparency about how government really works today. A PM's Department should be created, separate from the Cabinet Office; senior appointments including the Chief of Staff and 'Advisors', as well as instructions from No. 10 to departments, should be subject to effective Parliamentary scrutiny. Legally entrenched structures are required to confirm that devolved powers cannot simply be overridden by the Westminster Parliament. Greater fiscal autonomy should be guaranteed to local government.

Finally, politicians should choose either to recommit explicitly to the original system whereby the civil service remains separate from politics and take steps to make it effective; or acknowledge the drift towards greater political control of the civil service and introduce safeguards to minimise political abuse, for example by taking steps to increase scrutiny of appointments and expenditure.

Introduction

A liberal democracy expects laws to be made through an agreed democratic process, and then be implemented impartially.

To achieve this requires a distinction between the process of political choice and administrative expertise – between the roles of politicians and officials. The former are elected and receive their legitimacy through the ballot box. The latter are appointed and promoted for their capacity to advise and administer effectively.

Together this provides a democratic mandate for the decisions made within government, and an assurance that those decisions will be implemented efficiently by those with the relevant skills and experience to do so.

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https://doi.org/10.1177/002795011925000123 Published online by Cambridge University Press

This system has been entrenched in the United Kingdom for one hundred and fifty years. A shared culture of government, accepting that both politicians and officials have legitimate and separate functions to fulfil, has underpinned it.

Often the focus in the UK is on efficiency within government, as something to measure and improve. But the wider legitimacy of the system is a precondition of efficiency, and is needed for any system to be sustainable. It requires a shared view of how government should work, including respecting the different roles of Ministers within a government, limits on political patronage, and control on how public money can be spent.

In recent years however UK political debate has changed, challenging the legitimacy of this culture, and arguably making it less fit for purpose. This reflects wider social and technological trends as well as political developments.

A speeded-up world

There is no longer a confidential, closed off space for government processes, providing time for a largely written decision-making system. Choices between policy and financial priorities can no longer be proposed, challenged, and reshaped in private discussion between Ministers and officials, safe from public challenge or lobbying.

Today, 24-hour media and open online comment have reduced the private time available to government for analysis, discussion, and refining of evidence before decisions are announced.

Well before the government is able to present its own analysis and conclusions, those interested will likely have received information online, engaged with others sharing or opposing their view digitally, and decided on their views.

Against this background the temptation of those involved in the internal political debate to pass information or comment supporting their position into the public sphere, and thereby increase pressure for government to reach the same conclusion, is considerable.

In parallel, the end of any deference culture with regard to government has reduced the perceived legitimacy of the governmental decision-making process, and therefore has lowered trust in its likely effectiveness.

If citizens no longer consider that government has the capability to know best, or question its desire to govern on behalf of the wider public good, they will not be swayed by civil service claims to greater expertise or experience of what works and what does not.

Moreover, if politicians come to power with no direct experience of administration or understanding of the role of the civil service, they are less likely to consider the role of officials in government as useful or even legitimate.

A shifting centre of power

UK politics have become more personalised around the Prime Minister. The appointed group of advisers in 10 Downing Street have become the source of governmental decision-making, initiatives and political direction, at the expense of cabinet ministers' authority, the cabinet committee system, and the wider departmental structure across Whitehall.

In government today, information no longer flows openly between the centre and individual departments. Rather than leading policy in their own departments, many ministers are effectively under the control of the Prime Minister's personal advisers, and decisions are taken at the centre without their full involvement. Cabinet meetings, with some thirty ministers present, no longer play a significant part in deciding policy, and cabinet committees in so far as they take place are in practice subordinate to the views of advisers in No. 10.

The formal procedures of government, including legal and financial delegations, do not yet reflect this reality. Parliament is unable to scrutinise decision-making effectively within the opaque centre of government around the Prime Minister. Cabinet Ministers may have no real input into decisions that affect their areas of responsibility.

When informal decision-making by the Prime Minister's team makes it harder to allocate responsibility for decisions or their implementation across government, the consequence is frustration among MPs and the wider public. Parliamentary debate and Committee investigation are distanced from the process of how real priorities are arrived at and implemented, because those taking the decisions are not available for detailed scrutiny.

In parallel, the centralisation of executive power in Downing Street reduces its perceived legitimacy across the nations of the UK. Twenty years of devolved government in Scotland and Wales have been seen, in the context of Brexit, to be purely contingent on the Westminster Parliament. Northern Ireland's devolved authority has

https://doi.org/10.1177/002795011925000123 Published online by Cambridge University Press

been replaced for several years by an informal control by central government that satisfies no one.

Over the decades since the 1980s the UK has become the most fiscally-centralised country in the OECD world. Local authorities have highly-constrained revenue raising powers and a series of centrally-defined statutory duties to fulfil. There are no effective regional government bodies. Only the Scottish Parliament has even limited revenue-raising powers.

This leads to a perception of central government as remote from more local concerns, and reduces the incentive on citizens to become involved in local politics where the scope for decision-making on both control of resources and wider policy direction is now so limited.

These long-term trends have been exacerbated since 2016 by the referendum vote in favour of UK departure from the European Union.

Brexit requires a complex process of negotiation with the European Commission, the European Parliament, and 27 EU member states to unwind or amend the legal and regulatory frameworks that have been agreed over the past 45 years-odd since the UK joined in 1973.

This negotiation is the single biggest administrative challenge to any UK Administration in peacetime. It will require detailed decisions on UK government priorities within a coherent framework of objectives. There will also have to be a realistic assessment of what can be negotiated, and the timescale to achieve it.

At the end of the process the UK government may be less directly constrained in its policy choices in sensitive areas such as providing state aid to failing businesses, giving local companies favourable access to public sector contracts, changing food safety or consumer protection standards, and recognising the standards of other countries as equivalent to those of the UK.

All these new policy options carry serious risks to growth, investment, and jobs as well as possible political advantages. It is therefore vital that the UK's political structures restore their legitimacy and efficiency before embarking on strategic decisions to move the UK outside the EU's regulatory framework.

Three areas for change

What can be done to strengthen governance in this challenging context? I propose three main areas for change, and one explicit choice to be made.

First main area. Given that governmental decision-making is now more challenged, both in process and in substance, there is an urgent need to reveal precisely how decisions are made within 10 Downing Street and the Cabinet Office.

It is no longer acceptable for No. 10 political appointees to take decisions while Departmental Ministers and officials are made to justify them before Parliament and to the wider public. Ideally Cabinet Ministers should expect to act as the Prime Minister's senior representatives in their policy areas. But since No. 10 has become the central executive of the government, those given senior positions there should at least be subject to greater Parliamentary scrutiny.

The position of Prime Minister's Chief of Staff is more important than that of almost all Cabinet Ministers, and requires similar levels of public and Parliamentary attention.

Policy proposals

- *Replace the title of Advisor within the No. 10 system with something that more accurately reflects the executive power that now goes with these appointments.*
- *Reform No. 10 as the Prime Minister's Department, with its own Parliamentary scrutiny committee and annual reporting system, separate from the Cabinet Office.*
- *Make instructions given by No. 10 to departments available to Parliament.*

This can be done consistently with the usual national security constraints on the provision of sensitive information. Most decisions do not raise genuine security concerns, and would benefit from a clearer decision audit trail.

Second main area. Central government currently is constrained only by convention, not by law, from ignoring the views of devolved governments on sensitive issues.

There is an urgent need to reassure voters that the devolution settlement is not simply dependent on the continued political acquiescence of a majority in the House of Commons.

A failure to provide this minimum level of security for devolved decision-making simply strengthens the case made by those seeking independence for Scotland from

https://doi.org/10.1177/002795011925000123 Published online by Cambridge University Press

the rest of the UK. At present Brexit-related decisions by central government, e.g. on fishing or higher education, can override the existing devolution of powers.

Policy proposal

- *Legally entrench structures to confirm that devolved powers cannot simply be overridden by the Westminster Parliament in the event of a dispute. Greater transparency about how government really works today.*

Third main area. There is a need to recognise and accept that the potential efficiency gains of centralisation in resource allocation and project management have been overstated. Even where these benefits exist, they do not provide the acceptance of centralised decisions as legitimate, which effective government requires.

Greater fiscal autonomy at local and regional level also requires acceptance that a centrally defined standard of service cannot be guaranteed in all areas.

Criticisms of a 'postcode lottery' have over time served to undermine the ability to make local trade-offs between services and tax levels. These can still be set within agreed national parameters to prevent unacceptable outcomes in key services.

A recommitment to local democracy requires acceptance that different decisions on services and tax levels can legitimately be made by elected politicians at regional and local levels. This is an investment in restoring active democracy across the UK outside the Westminster square mile.

Policy proposal

- *Guarantee a level of fiscal autonomy in local government.*

A fundamental choice

In this environment of contested government, the United Kingdom faces a critical choice.

Option A: recommit to the current system

In principal at least, the civil service remains separate from politics, while supporting the elected government. Recommitting to this separation would require explicit acceptance across party politics that a non-political permanent administration is an advantage, not a hindrance, to effective government by Ministers and needs to be given the space and trust to carry out all of its functions effectively.

It would also be necessary to explain why the expertise, continuity, and professionalism that is required of officials is so important that it enables politicians to make real choices between priorities, use funds appropriately, and achieve outcomes, some of which require continuity beyond the normal political time horizon of the next election.

If politicians accept that this system produces more efficient government, then the next step is to combat the creeping marginalisation, or on occasion politicisation, of senior administrative posts, through overly centralised decision making in No. 10, and attempts by political advisers to micro-manage the administration of government.

This would require a renewed commitment to the independence and effectiveness of the Appointments Commission. The Commission must be vigilant to ensure that the criteria for senior posts across the civil service are not written in ways that give politically friendly candidates an unfair advantage. The choice of senior officials should not depend on how much they are seen or liked by Ministers, or their political staff. Once appointed, their input on the evidence base for policy decisions and leadership of the implantation of those decisions needs to be taken seriously across government.

Similar rigour would need be applied to regulatory agencies and other public sector arm's length bodies. To ensure effective governance, non-executive appointments to Boards should also require the agreement of the Board Chair. Former politicians moving into regulatory positions should be appointed on merit, and expected to behave while in post as officials outside political debate.

The current system aiming for promotion and appointment by merit can be sustained only if politicians support its underlying aims, and say so publicly. In parallel the civil service needs to continue to show that it is efficient when benchmarked against other high-performing administrations internationally. Essentially civil servants need to be trusted to do their job, so that Ministers can take political decisions that are evidence based, and professionally implemented.

Option B: continue the drift towards more political control of the civil service

In this case there would need to be at least an acceptance that explicit new safeguards would be needed to minimise the risk of political abuse.

https://doi.org/10.1177/002795011925000123 Published online by Cambridge University Press

For example, if Permanent Secretaries were to be appointed by political choice, they would expect to change with each new Administration. In that case a limited degree of continuity could be provided by more junior officials. But as a minimum those officials would require some externally-policed guarantee that they too could not be moved aside on political grounds.

If senior appointments both in Whitehall and to Chief Executive posts in major regulatory agencies were to be made by Ministers, these would have to be examined and, if need be, constrained through robust Parliamentary scrutiny. Their decisions would need to be clearly recorded to ensure responsibility and power were better aligned than at present.

When in post, political appointees would also require continued external control. This might be achieved through extending the current role of the National Audit Office into an Office of Government Efficiency. It would include managerial capability and administrative capacity-building within its remit, report regularly to Parliament on effectiveness, and have a process to recommend removal of non-performing executives.

The system of Accounting Officer control whereby Permanent Secretaries are personally responsible to Parliament for the expenditure of all public funds spent by their department would need to be amended to ensure that political decision-making around these positions remained compatible with rigorous transparency on how expenditure was decided and how contracts were awarded. This would not be easy to do.

All that said, even limited politicisation of the most senior administrative levels in government comes with serious risks. The loss of a coherent group of senior officials able to discuss cross-government issues frankly, draw on their professional experience of the conditions needed for successful policy implementation, and provide continuity across elections, would reduce overall government cohesion, resilience and efficiency. A further extension of political patronage, or marginalisation of official advice, would reduce the incentive of permanent officials to tell Ministers honestly what they would rather not hear. Instead there would be pressure to offer politically attractive options unsupported by the balance of evidence.

Politicians may decide that greater political control of public policymaking and administration is worth the damage caused to the effectiveness of government. If this is the choice they make, they must at the least accept the additional transparency and scrutiny described above. Otherwise government becomes a spoils system for the political winners and their friends, irrespective of the cost to citizens.

Government post-Brexit will face sustained and difficult challenges as the UK adjusts to its new situation. Current structures are too centralised and contested to deliver outcomes that are accepted as both legitimate and effective. Unless government can respond more openly to these challenges the UK risks continued political instability, with serious economic and social consequences. The UK cannot carry on without making a clear choice about how government works and ensuring that those who take the decisions are held accountable for their choices.

Hence:

Policy proposals

- *Reaffirm commitment to the present system; or*
- *Accept a continuing politicisation of senior civil servants or diminution of their role – in which case build in new safeguards for public accountability.*

https://doi.org/10.1177/002795011925000123 Published online by Cambridge University Press