



## **CIVIL SERVICE COMMISSION**

### **EXCEPTIONS REVIEW 2015/16**

This is an edited version of a paper that was produced for the Board of the Civil Service Commission in February 2016.

Selection for appointment to the Civil Service must by law be 'on merit on the basis of fair and open competition'.

The law allows the Civil Service Commission to include in its published Recruitment Principles <http://civilservicecommission.independent.gov.uk/civil-service-recruitment> provisions to allow for exceptions to this requirement where the provision is 'justified by the needs of the Civil Service' or 'to enable the Civil Service to participate in a government employment initiative that major employers....have been asked to participate in.'

The Recruitment Principles list, in Annex A, ten specific exceptions, plus a general power for the Commission to grant 'exceptional approvals' in exceptional circumstances.

The Board was keen to find out more about what the drivers were for Civil Service departments, in some circumstances, to use the permitted exceptions, rather than recruit on merit through a fair and open competition.

The review was based on the data that departments are required to report to the Commission, intelligence picked up through the Commission's regular engagement with departments, and a series of interviews with a selected number of departments and agencies specially conducted for this review.

**The general conclusion of the study was that exceptions were generally well understood and properly applied. The use and recording of exceptions has been a particular focus of activity for the Commission in the past few years and this seems to have had a positive effect. However there were some areas where understanding or application was not so strong.**

The statistical evidence is from 2014-15, but with reference to returns for the first half of 2015-16.

## **CURRENT POLITICAL AND ORGANISATIONAL CONTEXT**

There are a number of general factors that are likely to affect the overall use of exceptions now and in the future.

### **A smaller Civil Service**

Civil Service staff numbers have declined from over 490,000 in 2009 to approximately 397,000 in early 2016.

Civil Service management recognise that a smaller Civil Service may struggle to meet unexpected peaks of manpower demand. There are therefore a number of 'surge management' proposals being considered. These include rapid recruitment of short-term staff through job centres using Exception 1 (temporary appointments); and short-term re-engagement of retired civil servants using Exception 5 (former civil servants).

### **A more porous Civil Service**

This government shares an aspiration of many previous governments that there should be more movement in and out of the Civil Service from other sectors and employers.

Some of this movement may be through fair and open competition, but it is also likely to involve greater use of secondments using Exception 3, and re-instatements of former civil servants using Exception 5.

### **'Wicked problems'**

Many of the more serious challenges facing the country straddle public sector dividing lines. For example an ageing population will require much greater co-operation between central government, local authorities and the NHS. Anti-terrorism requires close working between many parties, including central government, local government, the intelligence agencies and the police.

Teams and indeed organisations inside and outside central government will be composed of individuals, some whose entry into the public sector was regulated by the Commission, and some whose entry was not. This is likely to involve the use of a number of exceptions.

### **New models of public sector delivery**

The devolved administrations in particular are developing new approaches that involve much greater co-operation between the various parts of the public sector.

For example, the Welsh Government has moved a great many arms-length bodies back into the Civil Service and has an aspiration to see free movement between all parts of the public sector in Wales. Scotland has a similar

approach and recently at the Institute for Government Oliver Letwin was outlining something similar as part of a new constitutional map for England.

## WHAT WE KNOW FROM OUR DATA

Over the past three years external recruitment to the Civil Service has increased from 19,500 in 2012-13 to 39,000 in 2014-15.

Recruitment by exception was lower in 2014-15 than it had been in 2012-13. The decline in actual numbers recruited by exception was from 6,000 to 4,400 (from 31% of recruitment in 12-13 to 11% in 14-15). As Table 1 shows, when non-discretionary TUPE transfers using Exception 8 are removed, discretionary exceptions account for 9.5% of recruitment in 14-15.

	2012/13	2013/14	2014/15
<b>Total external recruitment</b>	19,500	26,000	39,000
<b>Total recruitment by exception (including TUPE transfers)</b>	6,000	9,100	4,400
<b>Total recruitment by exception (excluding TUPE transfers)</b>	N/A	3,900	3,700
<b>Proportion of recruitment by exception (excluding TUPE transfers)</b>	N/A	15%	9.5%

**Table 1: External recruitment and proportion of exceptions**

The vast majority of recruitment to the Civil Service is at the lower grades. For example in 14-15 total Senior Civil Service (SCS) recruitment was 1% of all recruitment while recruitment to the EO grade represented 40% of all recruitment.

Recruitment by exception is proportionately slightly higher at the more senior grades as shown in Table 2.

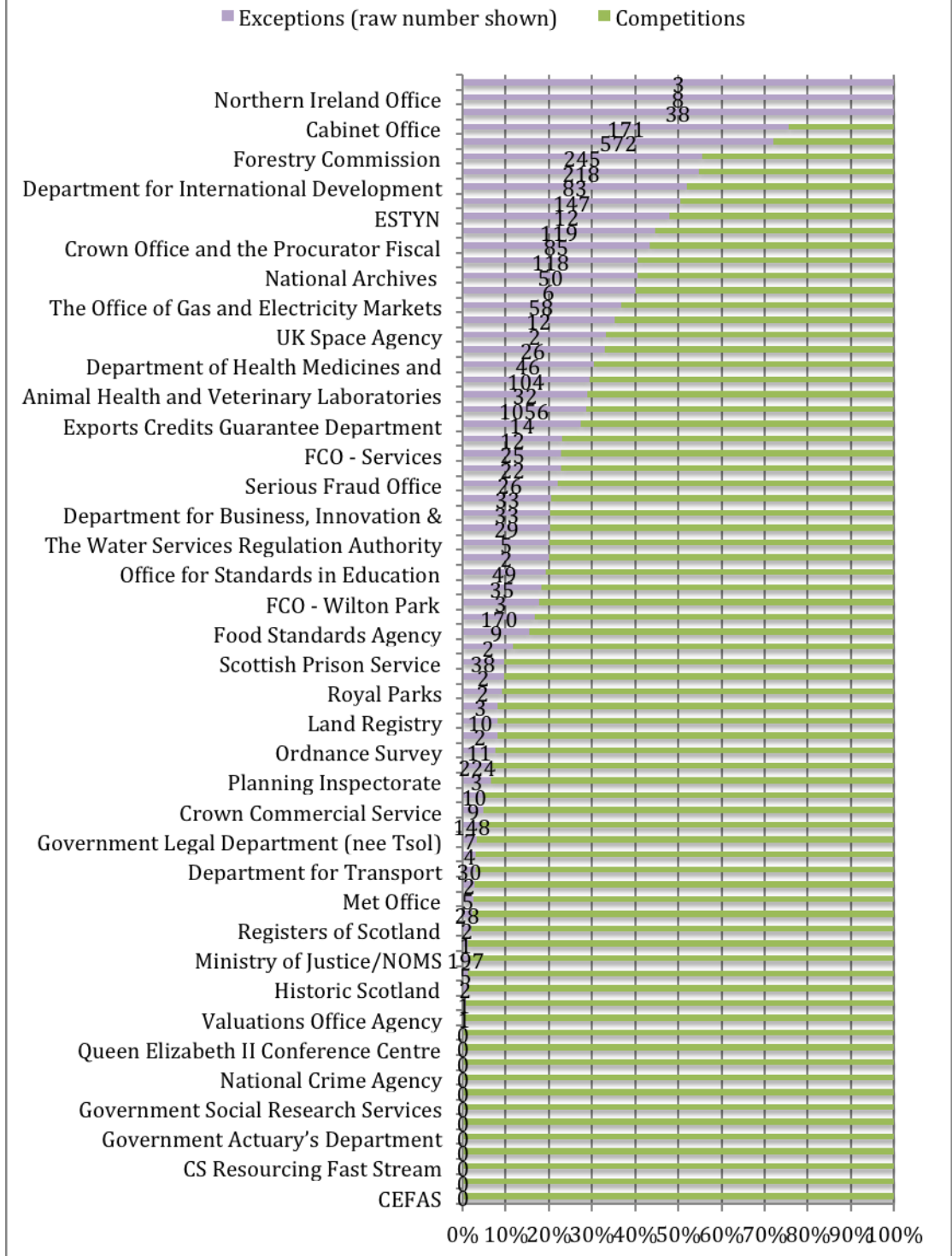


**Figure 1: Appointments by exception as a proportion of total recruitment, by grade 2014-15**

In 14-15 the most used exception by a significant degree was Exception 1, short-term appointments. This represented 65% of all exception use. The next most used was for non-discretionary transfer of staff under TUPE using Exception 9, followed by secondments using Exception 3.

The use of exceptions varies greatly across departments. Some departments did no recruitment by exception in 14-15 and a few did all of their recruitment in that year by exception. Table 3 shows the use of exceptions across departments with both the actual numbers and the percentages.

## Proportion of recruitment by competition and exception, 2014-15



**Figure 2: Use of exceptions by department 2014-15**

## WHAT WE KNOW FROM OUR CASEWORK

The Commission's casework relating to exceptions falls broadly into two categories;

- Dealing with requests for exceptions that fall outside of departments' delegated authority e.g. use of exceptions above SCS pay band 2; extension of temporary contracts by exception beyond two years.
- Dealing with breaches of the Recruitment Principles; these may come to light through a variety of means: departments recognise the mistake and bring it to the Commission's attention; compliance monitoring activity uncovers it; complaints.

### Exception requests

Because the use of exceptions is delegated to departments below the pay band 2/£86,000 threshold, the Commission's casework only relates to a small percentage of exception usage (approximately 4%). It therefore only gives a very partial view of exception usage. In 2014-15 the Commission dealt with 182 requests relating to exceptions.

Almost all of these related either to temporary appointments under Exception 1 (108=59%), or secondments under Exception 3 (64=35%). Departments came to the Commission either because they wanted to use these exceptions above the SCS pay band 2/£86,000 threshold, or they wanted to extend an exception beyond two years.

Of the 182 requests, 13 (7%) were declined. A number were withdrawn or not brought forward after discussion with Commission staff.

Requests were skewed towards the more senior grades in the Civil Service:

- 53 (29%) were SCS roles (pay bands 1-3)
- 59 (32%) were for Grade 6 and 7 roles (the SCS feeder grades)
- Only 20 (11%) were for roles in the lower three grades in the Civil Service (AA/AO/EO)

Given that the Recruitment Principles require specific permission from the Commission for the use of exceptions above the SCS pay band 2/£86,000 threshold, it is no surprise that SCS roles make up a high proportion of the Commission's casework, despite only representing about 1% of the Civil Service workforce.

Six departments between them made up 64% of the Commission's exception casework:

- Welsh Government (29 cases)

- Scottish Government (22)
- The Cabinet Office (20)
- The Home Office (18)
- Department of Health (15)
- Ministry of Defence (13)

There is no correlation between the size of a department and the amount of casework generated: for example, DWP is the largest Civil Service employer with approximately 20% of all civil servants, yet made only three requests in the year. While Figure 2 reflects that DWP does use exceptions in significant numbers, they are in the lower grades, are well managed, and consequently generate little casework for the Commission.

Some general observations can be made from our casework experience:

- As noted earlier, both the Welsh and Scottish Government are implementing models of public sector delivery that see much closer working, and interchange between all parts of the public sector. Their relatively high use of exceptions, particularly secondments, is therefore not surprising.
- The Cabinet Office, though a small department, has responsibility for two high priority areas for Ministers and senior officials, where skills are undeveloped in the Civil Service: digital and commercial.
- The Home Office has policy responsibility for the police and works closely with them; there are consequently a significant number of secondments from police forces to the department.
- Similarly, the Department of Health has to work closely with NHS bodies and there is a culture of interchange and secondment.

### **Breaches of the Recruitment Principles**

The Commission identified 14 instances in 2014-15 where the Recruitment Principles had been breached, as reported in the Annual Report and Accounts for the year on page 31 [http://civilservicecommission.independent.gov.uk/wp-content/uploads/2015/07/2903922-CSC-Annual-Report\\_Accessible-v0.2.pdf](http://civilservicecommission.independent.gov.uk/wp-content/uploads/2015/07/2903922-CSC-Annual-Report_Accessible-v0.2.pdf).

While no breaches are acceptable, these instances do not indicate widespread major issues with compliance; most of them appear to be down to human error or misunderstanding.

### **DEPARTMENTAL CASE STUDIES**

A number of departments/agencies were selected for detailed evidence-gathering conversations on their use of exceptions. Organisations were selected on the basis of a number of criteria, including:

- High proportion of recruitment by exception
- Low, or no, use of exceptions for recruitment
- Devolved administrations
- A mix of large, small and medium sized organisations
- Organisations where we know there is regular staff interchange with non-Civil Service bodies

The information and insights we gathered from these studies is reflected in the observations and conclusions in this review.

## **SOME OBSERVATIONS AND CONCLUSIONS**

### **General levels of understanding and compliance**

The Commission has in the last few years (particularly since 2012) put a special emphasis in its compliance monitoring work on the management of exceptions, as this appeared to be an area of weakness for many organisations.

The overall sense we have through continuing compliance monitoring activity, and our day-to-day interactions, is the understanding of the proper use of exceptions, and their management, is generally much better than was the case a few years ago.

Generally speaking the major Civil Service departments (broadly speaking, those with a Secretary of State) show good understanding of the proper use of exceptions and have developed systems for tracking them that are effective. The advantage and flexibility of selection on merit, even for fixed term appointments, is increasingly being realised.

There is some evidence that some of the adjustments to exceptions introduced in the April 2014 revision of the Recruitment Principles caught some organisation out, but this is being exposed and addressed.

### **Areas where understanding/compliance is more of an issue**

It is organisations more distant from the mainstream, where understanding and effectiveness are of a lower order. There are for example specialist agencies who generate most of their income from charging for their services and who are largely made up of specialist staff.

We have examples of organisations of this type with recruitment teams entirely recruited from outside the Civil Service, and with little understanding of the particular legal requirement for the Civil Service to select for recruitment on merit on the basis of fair and open competition, and the practical implications of this requirement.

The Cabinet Office is somewhat of an exception to this general picture. The Cabinet Office is a mainstream department like no other. It contains the Downing Street operation that supports the Prime Minister. It also contains the secretariat structure supporting the Cabinet, plus a small number of other



fixed functions. But there is a large and changing portfolio of other policy areas brought into the centre according to their current perceived importance: constitutional matters, social policies etc move in and out of the Cabinet Office according to the priorities of the PM of the day. Usually the impetus behind a Cabinet Office policy area is urgent and politically sensitive.

The Commission has worked hard with the members of the HR function in the Cabinet Office, who do understand the importance of the merit requirement, and with the senior leaders.

### **Revised approach to compliance monitoring**

This year the Commission has moved to a compliance monitoring regime that is much nearer 'real time'. Departments have been reporting on their recruitment activities on a quarterly basis. This has allowed our compliance monitoring contractor KPMG and the Commission to pick up on issues earlier: there is no longer a single once a year examination of returns.

First indications are that this has allowed issues to be identified earlier and for more timely interventions to be made. For example, as a result of issue brought up by compliance monitoring activity information and training sessions have been run for the staff of a number of departments that have to a large extent, centred on their use and recording of exceptions.

### **New models of public sector delivery**

As noted earlier in the review, new approaches to public sector delivery are being developed. The Scottish and Welsh Governments have been particularly active in this area. The intention of this approach is in many ways to erode the barriers between the central Civil Service, which we regulate, and other public sector bodies, which we do not.

This development is likely to impact on the use of exceptions. It will also throw a spotlight on the 'accredited NDPB' scheme, whereby the staff of other public bodies can apply for Civil Service vacancies as if they were civil servants if the body is accredited.

### **Civil Service recruitment as a policy tool**

Governments will sometimes use an aspect of Civil Service recruitment to advance a policy goal. When this is done, implementation is often quite quick with limited opportunity to work through all consequences.

There are a number of current policy proposals in development, which may, if implemented, require possibly some revision of the Commission's exception regime.

### **The impact of Civil Service recruitment techniques**

Departments will often cite the time it takes to conduct a compliant selection campaign as a reason for engaging staff by exception. However much the Commission stresses that it is not our requirements that prolong recruitment,

there is still a real, or imagined, perception in some quarters that recruitment on merit can take too long.

There is some evidence of willingness across the Civil Service to look at alternative recruitment processes. The Commission actively seeks to engage in these discussions.

## **Civil Service Commission Secretariat**

July 2016