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Revisiting New Zealand's Public Service Act

The promise and limits of civil service legislation



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About this report

New Zealand's experience shows that legislating for the civil service can strengthen accountability and protect core values, but only if the statute is carefully framed, politically durable and attentive to what legislation communicates as well as what it commands. This guest paper, from former chief policy advisor to the Public Service Commission of New Zealand Rodney Scott, looks at how such legislation in New Zealand has stood up to these tests.

Introduction

The Institute for Government has long argued that the UK government should strengthen civil service legislation because the current settlement leaves too much ambiguity about who leads the civil service, how responsibilities are allocated, and how impartiality and performance should be protected. New Zealand's State Sector Act 1988, Public Service Act 2020, and the amendments that came into force on 3 June 2026, offer a useful case study: not because the UK should copy New Zealand, but because they show both the value and the limits of codifying Westminster conventions.

The three stages illustrate a broader pattern. The 1988 Act used legislation to create a new managerial settlement, giving departmental chief executives – the New Zealand equivalent of permanent secretaries – greater autonomy while making them accountable for departmental performance. The 2020 Act maintained that distinction but sought to reassert the civil service as a unified institution, emphasising system leadership and collaboration between departments, as well as the statutory purpose, principles and ethos of the civil service that extends beyond the delivery of individual ministers' priorities. The 2026 amendments changed the emphasis of that framework, putting the responsibilities of chief executives and the delivery of government priorities more prominently at the front of the Act, and removing some of the more contested policy provisions that had been introduced in 2020 – most notably around diversity and inclusion

1988: A more explicit separation between ministers and officials

New Zealand's model is more explicit than Whitehall's and, since the reforms of the late 1970s and 1980s, has drawn a particularly clear institutional distinction between ministers and departments.

That distinction was reinforced physically in 1979, when ministers moved from offices within departments into the new executive wing of parliament, the Beehive. It was reinforced constitutionally by the cabinet manual, first published in 1979, which articulated conventions concerning the roles of ministers and departments.

The physical separation was significant. Ministers had previously worked from offices within their departments; they were now physically located elsewhere. The move did not itself create the State Sector reforms, but it reinforced a conception of ministers and departments as distinct institutions. In retrospect, that separation made it easier to conceive of the relationship in the terms that became influential in the 1980s: ministers as purchasers of policy advice and services, and departmental chief executives as managers accountable for delivering them.

The State Sector Act 1988 gave this distinction a powerful statutory expression. Permanent departmental heads were replaced by fixed-term chief executives, with clearer responsibilities for running departments, advising ministers, delivering services

and managing performance. The reforms established a clearer distinction between ministers' responsibility for policy and chief executives' responsibility for departmental management and performance, while giving managers greater freedom to manage.

The 1988 settlement was not a rejection of the traditional principles of a professional and politically neutral civil service. Merit-based appointment had much deeper roots, and the legislation retained political neutrality, good-employer obligations, equal employment opportunities and impartial selection of suitably qualified people. Later amendments also made free and frank advice and stewardship explicit statutory responsibilities. The result was a distinctive settlement: strong managerial responsibility to ministers, combined with statutory and conventional protections for professional independence and continuity.

2020: continuing the settlement while reasserting its principles

By 2020, the focus had shifted from creating a new managerial settlement to strengthening the civil service itself as a unified institution. The Act retained the responsibilities of chief executives and their accountability to ministers, while giving greater prominence to the common purpose, principles and ethos of the civil service.

There had been increasing emphasis within the civil service on collaboration, system leadership and the idea of a unified civil service. The 2020 Act gave statutory form to that direction while retaining the basic accountability of chief executives to ministers. It also brought together principles that had previously been dispersed between legislation, convention and administrative practice: political neutrality, free and frank advice, merit-based appointments, open government and stewardship. The Act described the spirit of service to the community as fundamental to the civil service.

This was not simply a technical exercise. The policy case for codification was described in terms of protecting principles that had developed through convention, practice and implicit assumptions, and that were considered vulnerable to erosion over time. The intention was to make those principles explicit and thereby make it harder for them to be gradually lost.

Conventions can be powerful when they are respected, but vulnerable when actors no longer feel bound by them. Once a convention has been ignored, its protective force is hard to restore. Legislation cannot prevent a future parliament from changing the law, but it can make the abandonment of a principle a deliberate political act rather than something that happens simply through changing behaviour.

This distinction between the 1988 and 2020 reforms is important. The earlier reforms used legislation to create a new institutional model. The 2020 reforms sought, as far as possible, to give statutory form to a direction that had already been developing within the civil service. Both required ministerial sponsorship and institutional ownership.

Legislation must communicate that serving ministers and upholding values are part of the same bargain

In 2026, amendments were made to the 2020 Act. Some were more symbolic than substantive, particularly those that changed the order rather than the content of the 2020 Act. Ordering did not change legal effect, but officials and ministers do not read statutes only as lawyers. They also read them as statements about what the system values.

The responsibilities of chief executives illustrate the point. Those responsibilities were already well established in the 1988 Act and remained in the 2020 Act. The 2026 amendments did not create a new responsibility for chief executives to support the government of the day. Instead, they moved those responsibilities to the front of the Act, before the provisions setting out the civil service's principles.

That change gives the Act a different emphasis. The 2020 structure began with the civil service's purpose, principles and ethos, before setting out the responsibilities through which the system delivered those purposes. The 2026 structure begins with the purpose of supporting the government to develop and implement its policies, delivering high-quality and efficient services, and meeting the needs of New Zealanders. The responsibilities of chief executives then follow, before the principles of the civil service.

The legal content overlaps considerably. The emphasis does not. The 2020 Act could be read as saying that the civil service exists to serve successive governments and the public while observing a set of enduring principles. The amended Act puts support for the government of the day first, and then sets out the principles within which that service is to be provided.

That may seem a small distinction, but statutes communicate as well as command. Ministers and officials do not encounter legislation only when resolving questions of legal interpretation. The structure of an Act can shape how its purpose is understood.

For the UK, the relevant consideration is not whether one ordering is necessarily right or wrong. It is whether legislation makes sufficiently clear that supporting the elected government of the day and upholding longstanding civil service principles are parts of the same bargain. A statute that foregrounds impartiality without explaining its relationship to ministerial government may be caricatured as entrenching official resistance. One that stresses delivery for ministers without articulating the enduring role of the civil service may be read as weakening its constitutional position. A sustainable statute would present these ideas as mutually reinforcing.

The 2026 amendments reveal the limits to statute as a guarantee of durability

The 2020 Act was built around a broad and defensible proposition: that New Zealand's civil service is an enduring institution serving successive governments and the public over time. But parts of the Act also reflected a particular moment in the institution's reforms.

Some of the principles expressed in the 2020 Act were not new. Merit-based appointment was already deeply established; political neutrality had long been part of the statutory conception of the civil service; and stewardship and free and frank advice had been added to the State Sector Act before 2020. What the 2020 Act did was bring these ideas together, make them more explicit, and place them within a broader conception of a unified civil service.

Other provisions represented more specific policy choices. In particular, the Act introduced more explicit requirements concerning diversity and inclusion. The 1988 Act already required good-employer policies, equal employment opportunities and impartial selection of suitably qualified people; the 2020 Act went further in explicitly requiring the civil service to promote diversity and inclusiveness.

The diversity provisions are an example of the limits of statutory durability. There was little suggestion at the time that diversity and inclusion were inherently inconsistent with a professional or merit-based civil service. But there was less political consensus around putting those particular workforce policy objectives in the core Public Service Act.

Their removal in 2026 illustrates the difficulty of putting contested policy preferences inside core civil service legislation. The issue for civil service legislation is whether a particular formulation of that objective has the same claim to permanence as political neutrality, merit or free and frank advice.

Civil service legislation functions differently from ordinary programme legislation. It shapes the institution that will serve future governments, including governments that may oppose the bill. That does not mean every clause must be agreed by every party. But if a civil service statute contains policy choices that are more specific or politically contested than the underlying constitutional settlement, later governments will have both the incentive and the legitimacy to rewrite it. What parliament can do, parliament can undo.

Political durability is consequently an important consideration in deciding what belongs in core civil service legislation. The constitutional minimum might include who leads the civil service, what permanent secretaries are responsible for, how ministers and officials relate, and which values must endure. Other reforms and policy positions may be better placed in secondary legislation, codes, guidance or ordinary programme statutes, where they can be changed without reopening the core civil service bargain.

The politics of the 2020 settlement

The 2020 Act was passed in unusual circumstances. The pandemic had disrupted the normal parliamentary timetable and the select committee process was curtailed. The Bill subsequently proceeded through its remaining stages 'under urgency', with opposition members expressing reservations about the truncated process.

There was nonetheless relatively little dispute over the core principles of a professional and politically neutral civil service. The New Zealand National Party – in opposition at the time – explicitly supported political neutrality, free and frank advice and open government; its principal criticism was that the statutory principles did not give sufficient prominence to the wise and effective use of public money.

The emphasis had changed by the time the Act was amended in 2026. The concern then was more explicitly about the civil service's responsiveness to the government of the day. Value for money was a prominent concern when the 2020 settlement was being debated; responsiveness became a more prominent concern when that settlement was later revised.

What does this mean for the UK?

New Zealand's experience should not deter the UK from legislating. It does, however, suggest some limits to what legislation can achieve.

The 2020 Act gave explicit statutory expression to principles that had previously been dispersed across legislation, convention and administrative practice. Those principles have survived the 2026 amendments. Political neutrality, free and frank advice, merit-based appointments, open government and stewardship remain in the Act. What changed was the architecture around them, and the extent to which more specific policy objectives were given a place in the core statute.

It is too early to know whether the overall effect has been to make the civil service more or less secure in the long term. The fact that a major civil service statute was substantially amended after only six years demonstrates the vulnerability that codification was intended to address. At the same time, the principles that were most deeply embedded in the existing constitutional settlement have survived the changes.

The important distinction is therefore between the principles that a civil service statute is intended to protect and the policy choices that happen to be contained within it at a particular moment. New Zealand's experience suggests that political neutrality, merit, free and frank advice, stewardship and the civil service's role in supporting successive governments can survive changes in legislative architecture. More contestable choices about management and workforce policy have proved less durable.

For a Westminster system considering civil service legislation, that makes the scope of the statute particularly important. The more it contains provisions specific to a particular model of public administration, the more difficult it may be to distinguish the constitutional settlement from the policy choices of the day.

Civil service legislation can make clear that the civil service serves the elected government of the day, and that it does so best when it remains impartial, merit-based, honest, capable and stewarded for the long term. The challenge is to frame those ideas as parts of the same bargain rather than rival claims. If the UK can do that, legislation could strengthen Whitehall rather than simply add another document to its constitutional furniture.

Rodney Scott was previously chief policy advisor to the Public Service Commission of New Zealand, providing policy advice on both the 2020 Act and 2026 amendments. However, any views expressed are his own and do not represent or reflect those of the New Zealand government.

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