

Shock and awe

Richard Kenyon of
**Field Fisher
Waterhouse**
evaluates the
likely employment
law consequences
of the Chancellor's
Spending Review

Brown axes 104,000 civil servants' ran the headlines on 12 July, on publication of the government's 2004 Spending Review, which sets out public spending plans for 2005-08. Sub-headed 'Stability, security and opportunity for all: investing for Britain's long-term future,' the Review sets the spending priorities as:

- meeting the security and defence needs of the nation;
- equipping the economy technologically and educationally to meet the global challenge ahead; and
- renewing public services and the public realm in this generation.

Blending the language of the 'war on terror' (with which it also deals) with public sector service provision, the dominant theme of the Review is the release of additional resources to 'frontline' services. This is to be at the expense of 'back office' functions, ie administrative posts, referred to euphemistically in the Review as 'efficiencies'.

Aims and objectives

The Chancellor stated before the House of Commons:

I want to put on record my appreciation of the work of our civil service and their commitment to the ethic of public service... But it is precisely because the public sector has invested £6 billion in new technology, modernising our ability to provide back office and transactional services, that I can announce... a gross reduction in civil service posts of 84,150.

An additional reduction of 20,000 civil service posts is achieved through: (a) the devolved Administrations in Scotland and Wales, and the Northern Ireland Office also

of the Home Office and Law Officers' Departments. The government will reclassify these posts as frontline.

In aggregate, departments are committed to achieving annual financial efficiencies in excess of £20bn by 2007-08. This is not merely a matter for central government, as at least £6.45bn will be found within local government expenditure. The government wishes to ensure that efficiency is raised throughout the public sector and departments are being actively encouraged, to the maximum extent possible, to cascade their three-year 2004

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engaging in Spending Review efficiency; and (b) the 2.5% annual efficiency target agreed for local government in England.

Behind the headlines, the details are more complex. The figure of 84,150 is a gross reduction in civil service and military posts in administrative and support functions by 2007-08. It includes a redeployment of 13,550 posts to provide additional support to 'key frontline activities'. The total net reduction in posts will therefore be 70,600 (see table opposite). Since this is an FTE (full-time equivalent) figure, the actual number of persons affected is likely to be more when jobshare and part-time working is taken into consideration.

The distinction between frontline and administrative staff is not always clear. Some staff who would appear to have frontline functions, such as prison and immigration officers, have historically been included within the administration budgets

Spending Review settlement down to all those public sector bodies that they fund.

In addition to the reduction in posts, the Review announces department-by-department plans to relocate further civil service jobs out of the South East, including:

- 5,050 staff posts relocated from the Treasury's departments;
- 4,000 from the Department for Work and Pensions;
- 3,900 from Defence; and
- approximately 1,000 each from the Departments of Health, Education and Industry.

The Chancellor announced the first sites for relocation, including 600 jobs from the Office of National Statistics moved to South Wales or Bristol, 250 posts from the Department of Rural Affairs to Yorkshire, and just under 100 from the Department of

International Development to East Kilbride. For all Departments making future job decisions, the government's policy will be a presumption in favour of location in the regions. In total, 20,028 civil service jobs will be relocated to the regions.

Mechanisms for change

A number of initiatives have been put in place to support these changes. The Cabinet Office is co-ordinating redeployment initiatives across the civil service, including the provision of a central brokerage unit for sharing information and best practice. In addition, the Efficiency Challenge Fund provides resources to assist departments with transition and implementation costs. The Chief Secretary of the Treasury has approved bids for £132.5m (2004-05) and £167.5m (2005-06) to support the early exit costs of 47,000 staff and over 7,000 relocations out of the South East. The Chancellor's stated commitment in the Review is that:

... because of the scale of the overall reductions... in each area of the country public servants asked to change jobs will be offered support with retraining and we are ready to work with the workforce and their unions to provide that help.

The precise way in which 'efficiencies' will be achieved is currently being examined by the various departments. One of the Chancellor's big hopes is that investment in information and communications technology (ICT) will produce long-term savings. According to the research company Kable, setting up local and central government services on-line will cost £7.4bn by 2006, of which £4.4bn falls to central government and £3bn to local government. Apparently, these figures do not include education, health or defence. However Kable believes that, by 2006, saving from e-government investment will only amount to £819m and on current predictions spending will always exceed savings. There is also some concern over the use of ICT in many frontline services, typically in relation to payments made to or by citizens around issues of social need, where a more personal contact with government could be more beneficial.

It seems likely that headcount reduction will be achieved by a number of methods, some of which will result in genuine staff and cost reductions, and others which are more likely to be cosmetic, such as seconding staff away from the department or outsourcing certain activities which may or may not result in an overall cost saving. Certainly, major mergers can lead to efficiencies. The merger of Inland Revenue and Customs and Excise will result in a gross reduction of 16,000 posts.

Likely effects

Since plans are still being formulated, departments are naturally reticent about disclosing their precise arrangements. However, the following issues are likely to arise:

- Typically, organisations which are reducing headcount look first to

agency staff. Given the recent *Brook Street Bureau v Dacas* [2004] decision, there is now more doubt than ever on the employment status of some of these agency staff. A delicate balance needs to be reached between treating these individuals (in a broad sense) 'fairly' when looking to terminate their contracts whilst at the same time not treating them as employees, which might then damage any later defence that they were employees of the agency.

The consolidation of 'back office' services into shared service centres is likely to result in efficiencies. This drawing together of services may involve the transfer of undertakings to which the Acquired Rights Directive and the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply. This will not necessarily always be the case given that 'an administrative

REDUCTION, REDEPLOYMENT AND RELOCATION OF POSTS

Department	Gross reduction in posts	Net reduction in posts*	Expected relocations by 2010
Education and Skills	1,960	1,960	800
Health	720	720	1,110
Transport	700	650	60
ODPM	400	400	240
Home Office	2,700	2,700	2,200
Constitutional Affairs	1,100	1,100	200
Law Officers' Departments	50	50	-
Defence	15,000	15,000	3,900
FCO	310	310	450
International Development	170	170	85
Trade and Industry	1,280	1,280	685
Environment, Food and Rural Affairs	2,400	2,400	390
Culture, Media and Sport	30	30	600
Work and Pensions	40,000	30,000	4,000
Northern Ireland Office	130	130	8
Chancellor's Departments	16,850	13,350	5,050
Cabinet Office	150	150	50
UK Trade and Investment	200	200	-
Total	84,150	70,600	20,028

*excluding posts redeployed to support frontline activities

reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive' (Article 1(c) of Council Directive 2001/23/EC). See also the Cabinet Office statement of practice on staff transfers in the public sector (January 2000), which deals with the *Henke v Schierke* [1996] judgment of the ECJ.

- Where a reorganisation and transfer is merely between central government departments and agencies (ie within the civil service), this would not involve a change of employer and the Directive and TUPE would therefore not apply. Nevertheless, paragraph 22 of the statement of practice directs central government departments to apply the principles of TUPE.
- Where TUPE applies, there are information and consultation obligations in addition to the need to respect terms and conditions. TUPE may act as an obstacle to attempts at harmonising terms and conditions as any contractual changes resulting from the transfer are void.
- Section 191 of the Employment Rights Act 1996 extends a considerable amount of statutory employment protection to Crown employment (meaning 'employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision'). However, Crown employees are not covered by redundancy payments legislation nor the legislation on collective redundancy consultation. Nonetheless, consultation will be an inevitable part of the process of reducing Civil Service posts, given the wide level of union recognition within the public sector. In relation to redundancy payments,

although the statutory scheme does not apply, members of the Principal Civil Service Pension Scheme are also members of the Civil Service Compensation Scheme which provides benefits where employees are 'retired on redundancy or for inefficiency'. One potential way of creating efficiencies is for back office functions to be shared between central government and non-departmental public bodies (NDPBs). This may create some public law issues relating to the statutory functions of NDPBs (ie whether they have powers to provide services to government departments).

public sector sickness absence and on measures to help those signed off for the long term back into attendance at work. It remains to be seen how this issue will be tackled, but it is worth remembering that self-certification was introduced to relieve GPs of the burden of waiting rooms full of sick employees (and malingerers) who did not need to see a doctor other than to get a doctor's certificate for their employer. Any initiative to cut unnecessary sick leave needs to be careful that it does not overload GPs struggling already in the 'front line'.

Considering the size of the announcement, the political response has been relatively muted. The Conservative

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- Where redundancy selection is an issue, there is a danger, if length of service is a criterion, that any recent work that a department has done to encourage women, members of ethnic minorities and disabled employees into employment may be set back.
- As far as relocation is concerned, there is a difficult practical task in persuading people to relocate especially at a time when job security is not what it used to be. There is also the potential cost of relocating staff depending on how generous government is prepared to be when assisting with relocation arrangements.

Finally, although less headline-grabbing than the staff reductions, the Spending Review included provisions on public sector sickness absences. According to the Chancellor, 80% of sickness absences in the civil service are self-certified and therefore not subject to formal medical certification. The Secretary of State for Work will report by the autumn on future management of

Party briefly challenged the validity of the figures but then, not to be outdone, announced its own plans at the beginning of August to cut 4,060 jobs from the DTT's London base and at UK Trade and Investment. The trade unions are still absorbing the shock of the announcement, but have indicated that they would consider industrial action. It remains to be seen whether unions are prepared to fight where the political message is that the jobs being lost are occupied by malingering bureaucrats starving 'frontline' services of vital resources.

Richard Kenyon is a partner in the employment department at Field Fisher Waterhouse

USEFUL LINKS

www.hm-treasury.gov.uk/spending_review/spend_sr04/spend_sr04_index.cfm

Brook Street Bureau (UK) Ltd v Dacas
[2004] EWCA Civ 217
Henke v Gemeinde Schierke & Verwaltungsgemeinschaft 'Brocken'
[1996] IRLR 710