

SB
831

PREM 19/322

Part 1

Confidential Filing

House of Commons Procedure.
Reorganisation of Select Committees.
Departmental Select Committees.

PARLIAMENT

May 1979

| Referred to | Date | Referred to | Date | Referred to | Date | Referred to | Date |
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| 8.5.79 | | 21.12.79 | | | | | |
| 5.6.79 | | 11.1.80 | | | | | |
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PART 1 ends:-

CDW to 8/5 EW 28. P. 80

PART 2 begins:-

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TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

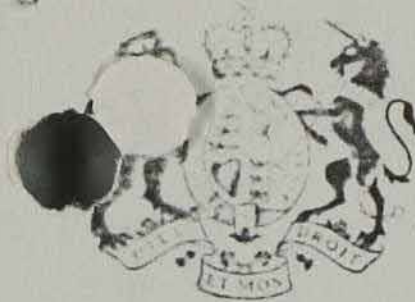
| Reference | Date |
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| C (79) 16 | 11.6.79 |
| CC (79) 6 th Conclusions, Minute 5 | 14.6.79 |
| CC (79) 26 th Conclusions, Minute 1 | 20.12.79 |
| C (80) 1 | 14.1.80 |
| CC (80) 2 nd Conclusions, Minute 5 | 17.1.80 |
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The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed Wayland

Date 1 July 2010

PREM Records Team



Chancellor of the Duchy of Lancaster

 Parliament
 PRIVY COUNCIL OFFICE
 WHITEHALL, LONDON SW1A 2AT

28 January 1980

MS

De Richard.

DEPARTMENTAL SELECT COMMITTEES

Thank you for your letter of 24 January.

The discussions through the usual channels are almost complete, and as soon as they are I shall table a revised Motion to establish the Liaison Committee, and also find time for the necessary short debate as quickly as possible thereafter. I am arranging to see Edward du Cann this week and, subject to the outcome of that talk, will seek a meeting with Bruce Douglas Mann.

We are all agreed that we should seek to discourage the new Departmental Select Committees from duplicating the work of Standing Committees considering bills, but we must be as sure as we reasonably can that any approaches are likely to be successful and not lead to disputes that will in the end produce more and not less risk of embarrassment for Ministers and additional work for departments. I am inclined, therefore, to put the argument in general terms in the first instance, though of course citing the sale of council houses as the immediate example, rather than present a list of all the subjects covered by your two bills. I should, incidentally, be glad if you could keep me informed of developments. Is the Select Committee continuing to ask for more evidence about council house sales?

I was glad to note that the Committee were not asking, at least at this stage, to see documents of the previous administration, and would prefer not to raise the matter as a hypothetical question unless and until it comes up again, or is raised by the Liaison Committee. I shall certainly have in mind in talking to Edward du Cann the problem of the overlap with the Public Accounts Committee, of which the sale of council houses again provides the immediate example.

Contd...

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I am copying this letter to the Prime Minister and to Cabinet colleagues and to Sir Robert Armstrong.

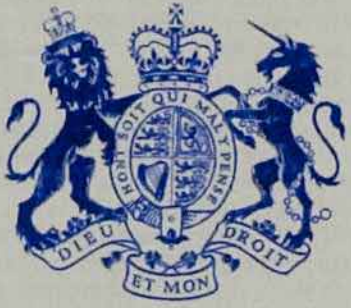
con Jus N.C.

The Rt Hon Michael Heseltine, MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
SW1

CONFIDENTIAL

29 JAN 1960





Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

25 January 1980

Law Nick

You asked for details of outstanding select committee reports to which replies are necessary but have not yet been given. We have obtained the following information.

Foreign and Commonwealth Office

Select Committee on Overseas Development, 1st Report, Session 1978-79

"The Pattern of United Kingdom Aid to India"

[/The Chairman of the Select Committee has been informed that a reply cannot be given until the Aid Policy Review is completed.]

Home Office

Expenditure Committee Report, Session 1978-79

"Reduction of Pressure on the Penal System"

[/It is hoped that a reply will be made during February 1980.]

Treasury

Public Accounts Committee Third Report, Session 1979-80

"Department of Energy: Off-Shore Supplies, Interest Relief Grants"

[/Reply in preparation.]

Departments of Industry and Trade

Select Committee on Nationalised Industries, 2nd Report, Session 1978-79

"Consumers and the Nationalised Industries: Pre-Legislation Hearings"

[/Reply awaits completion of Review of Consumer Affairs.]

You will know from H(79)83 and subsequent correspondence that the Home Secretary secured the agreement of other Ministers to responding by way of Written Answer to the long outstanding report of the Expenditure Committee, Session 1974-74, on Charity Commissioners and their Accountability. That Answer was given yesterday.

John Stevens

J W STEVENS
Private Secretary

N J Sanders Esq
PS/Prime Minister
10 Downing Street

28 JAN 1960



Postmarked

i MAP to see
2PA
MS

2 MARSHAM STREET
 LONDON SW1P 3EB

My ref: H/PSO/10418/80

Your ref:

24 January 1980

John Brown

DEPARTMENTAL SELECT COMMITTEES

At Cabinet last week it was agreed that Departmental Select Committees should be discouraged from examining matters covered by Bills which had received a second reading, and particularly while they were being examined by a standing committee. Discouragement of discussion after second reading goes a fair step back towards the old convention and is something which you will no doubt be putting to the Chairman of the Liaison Committee, in accordance with the Cabinet discussion.

At Cabinet it was also agreed that you would enter into discussions with the Chairman of the Liaison Committee, and if necessary with the Chairman of the Environment Select Committee, specifically to discourage the Environment Committee from discussing matters covered in the Housing Bill while that Bill is in Standing Committee. The issue has arisen on one particular, though major, aspect of the Bill - the sale of council houses - but the Bill goes wider than this and, to establish the principle, it is important that the Select Committee should not merely shift its attention from one part of it to another. The main matters covered by the Housing Bill are:-

- Right to buy
- Security of tenure and other rights of public sector tenants
- Private rented sector: shorthold tenancies; rent arrangements
- Repairs and improvements
- Housing subsidies

There are in addition, proposals in the fields of mortgages and home ownership, and housing associations which the Select Committee should also avoid.

C O N F I D E N T I A L

It will be important to make plain that the provisions of the Local Government, Planning and Land Bill (which, subject to the approval of Legislation Committee on Wednesday, is to be re-introduced this week) are affected in the same way. Here the principal proposals are:-

Relaxation of local authority controls
and publication of information

Direct Labour^{oo} Organisations

Urban Development Corporations

New system of rate support grants

Controls over capital expenditure

Repeal of the Community Land Act

Various changes to planning law, including
charging for planning applications and
rationalisation of functions between
counties and districts

There are also clauses covering councillors' allowances, rates, land compensation, and new towns.

We also discussed at Cabinet the release to Committees of documents of the previous Administration. I now understand that while the Environment Committee have discussed the question of seeing the previous Government's document on the sale of the council houses, they have not yet asked to see it, and I do not know whether they will do so. In the circumstances, you may judge that it would be right to raise this, as a hypothetical question, as there can be no question of us allowing officials to release this document. On the other hand you may feel it would be better to have this for the time being, in case the issue does not arise in practice.

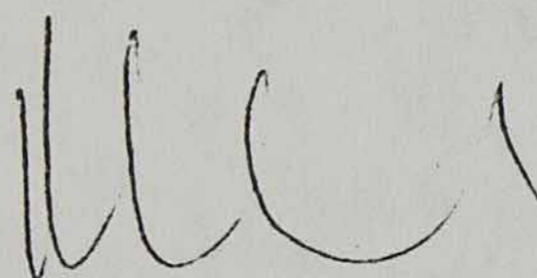
There is one additional point that you may like to have in mind in talking to the Chairman of the Liaison Committee. This is that, in the case of council house sales, the Public Accounts Committee are involved as well as the Environment Select Committee. The PAC have asked the Accounting Officer to give evidence on 18 February on the financial effects of sales. Their examination of this topic seems to go well beyond the normal scope of their examination of an Accounting Officer - they appear not to be looking retrospectively at accounts, but at current policy on which legislation is before the House. In doing so, problems and difficulties will arise for officials giving evidence of the same kind as those raised by the possibility of their having to appear before the Environment Select Committee. In particular the Opposition know that other appraisals of the financial implications of council house sales have been prepared, though they are not

C O N F I D E N T I A L

available. (An additional potential difficulty is that E&AD have recently asked to see the papers on which our own Appraisal (published this month) was prepared. They have been told that the Accounting Officer doubts whether the papers in question are "audit" papers in the ordinary sense and whether the examination of such papers falls within the normal area of audit investigation. The matter may however be taken further by the Comptroller and Auditor General).

I am copying this to the Prime Minister and to Cabinet colleagues.

Yes



MICHAEL HESELTINE

25 JAN 1980



VA.



CC: MR HYDE
MR TOWNEY
No 10

PRIVY COUNCIL OFFICE
WHITEHALL LONDON SW1A 2AT

Chancellor of the Duchy of Lancaster

21 January 1980

VMS

Dear Paul.

SELECT COMMITTEES - REVISED MEMORANDUM OF GUIDANCE

You wrote to me on 21 December enclosing a revised version of the Memorandum of Guidance for officials appearing before Select Committees. I am quite content with the revised text, although it may, of course, be necessary for a further guidance to be issued when we have more experience of the working of the new Departmental Select Committees. But I think the revised text should now be sent to departments as soon as possible.

You asked particularly for my views on the handling of the Liaison Committee's interest in this matter. If that committee had been established I am sure the chairman would have welcomed receiving an early copy "for information" as a helpful and co-operative gesture on the part of the Government. Indeed, in the absence of a Liaison Committee I think there is much to be said for my sending a copy immediately to Edward du Cann as the Chairman of the Treasury and Civil Service Select Committee. In doing so, I would lay emphasis on the limited nature of the changes made to the memorandum since it was printed with the Procedure Committee's report.

If you agree with this approach I would also seek Edward du Cann's views on circulating a copy of the guidance to the chairman of all the departmentally related Select Committees. I believe a copy of the guidance should be available to the Select Committees, but I think it would be best to make it available through the chairman of the committee rather than the clerk.

I am sending copies of this letter to the recipients of yours, and to the Chief Whip.

Yours ever *Paul Channon*

Paul Channon Esq, MP
Minister of State
Civil Service Department
Whitehall
SW1



cc: Mr Hyde
Mr Townley
No 10

VA.



Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

1 February 1980

VMS

Low Jeffrey

SELECT COMMITTEES - REVISED MEMORANDUM
OF GUIDANCE

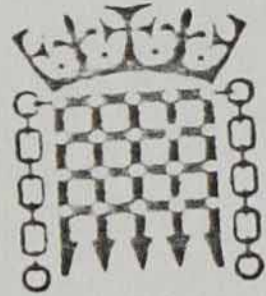
As you know, with the agreement of your Minister of State, the Chancellor of the Duchy sent an advance copy of the revised Memorandum of Guidance to Mr Edward du Cann, and also suggested that when the guidance was finally printed, copies should be sent to the chairmen of all Select Committees.

... Your Minister of State may be interested to see the attached letter from Mr Edward du Cann, in which he confirms that it would be right for the chairman of committees to see copies.

John W Stevens
J W STEVENS

G E T Green Esq
Private Secretary to the
Minister of State
Civil Service Department
Old Admiralty Building
Whitehall

From: the Rt. Hon. Edward du Cann, M.P.



HOUSE OF COMMONS
LONDON SW1A 0AA

3

30 January 1980

VMS

L. Norman

Thank you for sending me an advance copy of the Revised Memorandum of Guidance for officials appearing before Select Committees. This is certainly something that should be considered by the Liaison Committee, and I am sure it would be right for Chairmen of Committees to see copies as promptly as possible.

Yc
Σ
—

The Rt Hon Norman St John Stevas, M.P.
Privy Council Office
WHITEHALL
SW1A 2AT

6 FEB 1960

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Ref. A01146

PRIME MINISTER

Departmental Select Committees

(C(80) 1)

BACKGROUND

The First Report from the Select Committee on Procedure for Session 1977-78 recommended the establishment of Select Committees related to Departments to provide the House of Commons "with the means of scrutinising the activities of the public service on a continuing and systematic basis" (recommendation 31). In June last year the Cabinet accepted in principle the establishment of these Select Committees and agreed to take no action on recommendations to increase their formal powers (CC(79) 6th Conclusions, Minute 5). Arguments about membership within the Opposition meant that the Committees were not set up and did not seek evidence from Departments until December. The present memorandum gives Cabinet an opportunity to discuss issues raised by the initial work of the Committees which colleagues have brought to the notice of the Chancellor of the Duchy.

2. The most important question is the potential overlap between Select Committees and the House on the examination of Bills (paragraphs 2-5 and Annex, paragraphs 4 and 5 of C(80) 1). This has been raised by the Secretary of State for the Environment because his Select Committee wished to investigate the implications of selling council houses which is, of course, dealt with in the Housing Bill now before the House. Similarly, the Employment Committee intended to consider the legal immunities of trade unions, on which Ministers have decided to legislate further in the Employment Bill. The Chancellor of the Duchy proposes that Select Committees should be discouraged from examining matters covered by Bills while they are in Standing Committee. This is the view of the Secretary of State for the Environment (his letter of 12th December) and also of the Secretary of State for Scotland.

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3. The possibilities of duplication of effort over statutory instruments and European legislation seem much less than with Bills (paragraphs 6 and 7). The Chancellor of the Duchy proposes that the Government should not discourage Select Committees considering topics dealt with in delegated legislation, or in White Papers if they want to.

4. The doctrine that advice to Ministers is confidential is well established, though occasionally challenged. The proposal is to confirm that doctrine (paragraph 8). The revised Memorandum of Guidance to Officials is proposed for circulation to the Liaison Committee for information. A short annex of the Memorandum is appended to this brief.

5. The queries about "the associated public bodies" whose activities the Committees may examine are, for the most part, not difficult to answer. The Chancellor of the Duchy offers three guidelines (paragraph 10). A question has arisen over the Security Service, for which the Home Secretary has Ministerial responsibility, but which would not be caught by the other two guidelines (it is not a Quango, and Ministers do not generally answer Questions in Parliament about it). The Home Secretary has taken the line with this Select Committee which is put forward in the last sentence of paragraph 10, i. e. that it would not be in the public interest to provide information about the Service. You will remember that you endorsed the view in paragraph 5 of my note of 3rd December 1979 to Mr. Sanders that the Government should stand firmly on the ground that it does not accept that the Security Service and its affairs are within the terms of reference of the Home Affairs Select Committee.

HANDLING

6. Unless you wish to give the Chancellor of the Duchy the opportunity to make some general remarks about his memorandum, you could simply take each section of the paper in turn, leaving any other points which Ministers wish to raise until the end.

Matters included in legislation

7. The Chancellor of the Duchy of Lancaster proposes that Ministers should seek to discourage Select Committees from examining matters covered by Bills which are in Standing Committee. This would leave Select Committees free to examine and to seek evidence about matters in a Bill that -

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- (a) Had been introduced first into the House of Lords.
- (b) Was awaiting Second Reading in the Commons; or (in practice, less likely)
- (c) Was awaiting Report or Third Reading.

The Chancellor of the Duchy, the Secretary of State for the Environment and the Secretary of State for Employment may wish to comment. The Lord Chancellor may have views about Bills before the Lords, and other Ministers may be concerned about the consequences of simultaneous consideration of Bills by two Parliamentary procedures. The Minister of State, Civil Service Department, may wish to contribute on the implications for the workload of the Civil Service.

8. It should be perfectly possible to persuade Select Committees to agree to the limited proposal in the paper. A wider "hands-off" policy, for example, that Committees should refrain from examining matters in Bills before Parliament might be much more controversial and difficult to secure. As a first step, the Chancellor of the Duchy's proposal may be felt to be sufficient.

Other matters before Parliament

9. The Chancellor of the Duchy proposes that Select Committees should not be discouraged from seeking evidence about statutory instruments or other matters likely to be debated. The examination of the merits of a statutory instrument by a Select Committee can be distinguished from examination of its vires by the Scrutiny Committee. The likelihood of overlap between a Select Committee and the EEC Secondary Legislation Committee is not very great. The Secretary of State for Scotland, who raised the issue on the Rate Support Grant Order (Annex, paragraph 3) may wish to comment. The Home Secretary, who has given evidence to the Home Affairs Select Committee, may have views on the appearance of Ministers rather than officials when Committees are considering controversial matters.

Advice to Ministers

10. You may wish to ask your colleagues to confirm their acceptance of the doctrines that advice given by Law Officers and advice from officials to Ministers should not be disclosed to the House or otherwise made public.

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Associated public bodies

11. The terms of reference of the Select Committees extend to the associated public bodies of Departments. It seems right that Departments should provide lists of these bodies if asked to do so. You might ask the Minister of State, Civil Service Department, to speak to the suggestions in paragraph 10 about the guidelines for listing these bodies where that is necessary. You will wish to confirm that other Ministers are content.

12. The Home Secretary may mention the line he has taken over the Security Service; you will wish to avoid discussion of the non-avowed intelligence services for which the Foreign and Commonwealth Secretary is responsible, though it is partly to protect their position that we need to take a firm line on the Security Service.

13. The Chancellor of the Exchequer may possibly express reservations about including the Bank of England. The Pliatzky Report lists the Bank (along with the BBC, the IBA, Cable and Wireless, and the Covent Garden Marketing Authority) as a public corporation. More to the point, the Select Committee on Nationalised Industries considered the Bank of England and these other bodies. Departmental Committees will expect to follow suit.


Other matters

14. You may wish to give Cabinet colleagues the chance to raise any other matters relating to Select Committees not covered in the memorandum.

CONCLUSIONS

15. Subject to any modifications agreed in discussion, you will wish to guide the Cabinet to endorse the proposals in the paper and to agree the handling (paragraph 11):

- (a) The Chancellor of the Duchy to put the Cabinet's views about matters covered by Bills to Mr. Du Cann, the likely Chairman of the Liaison Committee.
- (b) Departmental Ministers (if action is necessary before the Liaison Committee is set up) to discuss with the Chairmen of their Select Committees the issues in the memorandum in the light of the Cabinet's conclusions.



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The Chief Whip may suggest, in addition, some concerted approach to Conservative Party Chairmen or members of the Departmental Select Committees would be useful. You may think that the issues are not at present sufficiently crucial to justify this.



ROBERT ARMSTRONG

16th January, 1980

MEMORANDUM OF GUIDANCE

1. The Civil Service Department some years ago issued a Memorandum of Guidance to all Government Departments for the use of officials appearing before Select Committees. It contains an outline of the Select Committee system, including the powers of the Committees, and gave guidance on such matters as the provision of official evidence, procedures enabling the Committees to be given confidential information, and the form of Departmental replies to Select Committee reports.

2. The Procedure Committee asked for a copy of the document and it was published as Appendix D to their first report for the 1977/78 session. The report described the memorandum as "broadly unobjectionable". The Memorandum of Guidance has recently been revised and brought up to date; but few changes of substance have been made. The Minister of State, Civil Service Department, circulated the revised version to all Ministers in charge of Departments on 21 December, and no substantial comments have been received. He proposes to issue it to Departments shortly, and the Chancellor of the Duchy of Lancaster will let the Liaison Committee have a copy for their information.

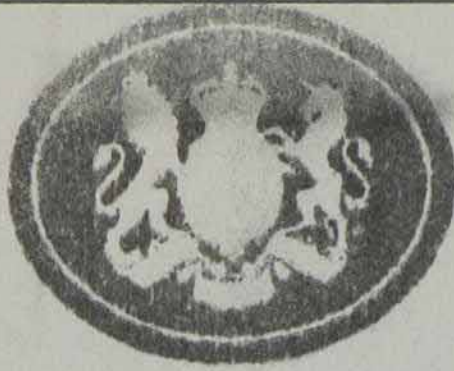
3. Mr Christopher Price, MP, who is Chairman of the Education Select Committee, criticised in a recent article the advice given in the Memorandum about matters on which officials should not give evidence. There are three pages of guidance on a wide variety of situations. On the disclosure of the Advice of Officials to Ministers it says -

"In order to preserve the collective responsibility of Ministers, the advice given to Ministers by their Departments should not be disclosed, nor should information about interdepartmental exchanges on policy issues, about the level at which decisions were taken or the manner in which a Minister has consulted his colleagues. Information should not be given about Cabinet Committees or their discussions."

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On the Advice Given by a Law Officer it says -

"There should not be disclosed to a Committee any advice that may have been given by the Law Officers. There is a well established convention that the advice which Law Officers give to Ministers is confidential. It is only when Law Officers expressly authorise the disclosure of that advice, or themselves report to or advise Parliament or a Committee, that such advice is revealed."



SECRETARY OF STATE FOR ENERGY
THAMES HOUSE SOUTH
MILLBANK LONDON SW1P 4QJ
01 211 6402

VMS

Mr Paul Channon MP
Minister of State for the Civil
Service Department
Whitehall
London SW1A 2AZ

14 January 1980

De Pau

SELECT COMMITTEES: REVISED MEMORANDUM OF GUIDANCE

Thank you for your letter of 21 December enclosing the latest draft of the revised Memorandum of Guidance for officials appearing before Select Committees.

I agree the line you propose concerning the questions of concurrent Select Committee and Standing Committee examinations of legislative proposals and of the period within which replies should normally be made to Select Committee Reports. I also agree that we should avoid further delay in the issue of the revised Memorandum of Guidance now that new Committees are underway. When the Liaison Committee is re-appointed I would think it sufficient to send them the revised Memorandum 'for information only', as you suggest.

I am copying this letter to recipients of yours.

Yours

D A R Howell

D Howell

15 JAN 1980



15

CONFIDENTIAL

told M Vile
and K Miller

PRIME MINISTER

on 14/11 The Chancellor of the Duchy has
MS sent us this draft paper for

DRAFT

CABINET

next Thursday. I think that
it serves its purpose well.

DEPARTMENTAL SELECT COMMITTEES

Content for it to be circulated
in this form?

Memorandum by the Chancellor of the Duchy of Lancaster

MS
u/1

Yes ms

1. Cabinet accepted in principle last June the recommendations of the Select Committee on Procedure to establish Select Committees related to Departments (CC(79)6th Conclusions, Minute 5). The Committees have now begun work and their early meetings have raised some issues which have been brought to my attention by my colleagues. These are summarised in the Annex. We need to agree the line we should take about -

- (a) the wish of Select Committees to examine matters covered by current legislation or otherwise likely to be debated in the House;
- (b) requests for evidence that would disclose advice given to Ministers;
- (c) queries concerning the "associated public bodies" into whose activities the Committees may enquire.

Examination of matters included in legislation

2. The Secretary of State for the Environment draws attention in his letter of 12 December (copied to Cabinet colleagues) to problems which might arise if Select Committees investigate topics that are the subject of current legislation.

CONFIDENTIAL

3. In particular he draws attention to the difficulties that would arise if Select Committee and Standing Committee investigations and proceedings take place simultaneously. This issue is about to arise with the Environment Committee and the Standing Committee on the Housing Bill. The Secretary of State suggests that no attempt should be made to get the Committee to abandon their proposed investigation, but that they should be asked to adjust the timing of their programme to avoid simultaneous consideration in the Select Committee and in the Commons Standing Committee.

4. The Procedure Committee were agreed that Bills should not normally be referred to Select Committees, but their views on how far these Committees should go in considering proposals for legislation are not altogether clear. They recommended, however, that the role of Standing Committees should be extended to enable the "factual and technical background" to Bills to be examined in additional sessions before clause-by-clause examination. This latter proposal has yet to be considered, but is hardly consistent with the examination of Bill proposals by Select Committees. We are not, of course, committed to the Procedure Committee's recommendation, on which I will be consulting Cabinet colleagues later this session.

5. My conclusion is that we should seek to discourage Select Committees from examining matters covered by bills while they are at the Standing Committee stage.

Other matters to be debated in Parliament

6. The Select Committee on Scottish Affairs (Annex, paragraph 4) has taken evidence on the Rate Support Grant (Scotland) Order, for which the Government will shortly seek an affirmative resolution. The Employment Committee is seeking to examine the law on trade union immunities (Annex, paragraph 3) on which the Government are considering provisions in the current Bill. Select Committees will in future undoubtedly seek to consider proposals in White Papers or Green Papers and on a host of matters on which Parliamentary debate will take place subsequently.

7. I propose that the Government should not seek to discourage Select Committee examination of topics dealt with in current delegated legislation or in White Papers. Where the subject is highly controversial, Departmental Ministers, rather than officials, could give evidence to Select Committees in advance of debate on the floor of the House.

Advice to Ministers

8. The Home Affairs Committee (Annex, paragraph 5) wish to find out what legal advice was given to Ministers about the new immigration rules. This request raises both special and general issues. The doctrine that advice given by the Law Officers is not disclosed is well established. There is no special policy about the advice of Departmental legal staff. It is covered by the general rule that advice from officials to Ministers should never be disclosed. This is set out in the Memorandum of Guidance to Officials appearing before Select Committees,

which has recently been revised and which, subject to the agreement of Cabinet colleagues, I propose to circulate to the Liaison Committee for information. There may nevertheless be increasing pressure for officials to say what advice they have tendered, and whether it was accepted. I propose that we should stand by the doctrine that the internal proceedings of Government should not be disclosed to the House or otherwise be made public.

Associated Public Bodies

9. The Select Committees have been given very general terms of reference - "To examine the expenditure, administration and policy of their respective Departments and associated public bodies". This was in line with the recommendations of the Procedure Committee. At least one Committee (Annex, paragraph 6) has sought the views of Departments about the public bodies which in their view come within the definition.

10. I indicated to the House in the procedure debate last June that an associated public body was "one for which there was a significant degree of Ministerial responsibility". I suggest that in preparing a response Departments should take into account the lists of bodies set out in the White Paper on Non-Departmental Public Bodies (the Pliatzky Report) and the extent to which Ministers answer Questions about bodies of this kind in Parliament. In the last resort, it must be for the Select Committees themselves, subject to the authority of the House,

to interpret their terms of reference. If, in the event, a Select Committee decides to investigate a particular associated public body, it would be open to Ministers to refuse information about that body when disclosure would not be in the public interest, and where refusal could be justified to Parliament as a whole.

Handling

11. The normal point of contact between the Government and Select Committees has been the Leader of the House and a Liaison Committee comprising Select Committee chairmen. I hope that a new Liaison Committee, on the lines recommended by the Procedure Committee, will be established by resolution later this month. I propose to seek an early meeting with the chairman of the Committee to discuss the issues in this memorandum in the light of the Cabinet's conclusions. Meanwhile, it may be necessary for Ministers or their Departments to discuss these matters with individual Select Committees. If they run into difficulty in gaining acceptance of our conclusions, they might ask the Committees to defer action on areas of controversy until there has been an opportunity for discussion collectively with chairmen in the Liaison Committee.

Conclusions

12. In summary, I propose that we should -
- (a) seek to discourage Departmental Select Committees from examining matters covered by bills which are before a Standing Committee;

- (b) take no action to discourage discussion by Select Committees of other matters which may shortly be debated in either House;
- (c) maintain the principle that the advice of the Law Officers and official advice to Ministers is confidential;
- (d) be guided by paragraph 10 in answering queries from Select Committees about the public bodies associated with Departments.

ISSUES ARISING FROM THE WORK OF THE NEW DEPARTMENTAL SELECT COMMITTEES

1. This Annex reports the enquiries so far made by several Select Committees and indicates the issues raised by those enquiries.

Environment Committee

2. The Secretary of State for the Environment reports in his letter of 12 December (previously circulated) that the Environment Committee are proposing to enquire into the future of the rented housing sector and, in particular, to take early evidence on the financial and social implications of the sale of council houses. Major provisions concerning the sale of council houses are included in the Housing Bill, which will shortly have its Second Reading and will be referred to Standing Committee before the end of February.

(a) The question is whether simultaneous consideration with Commons Standing Committee can be avoided.

What view should be taken of the request for evidence?

Employment Committee

3. The Employment Committee wish to consider the legal immunities of trade unions. Written evidence has been requested by 21 January with a view to meeting in private on 30 January to consider the course of the enquiry. This subject is not at present dealt with directly in the Employment Bill, though it

is relevant to the provision on picketing. The Secretary of State for Employment proposes to seek the agreement of his colleagues at E Committee on 15 January to the inclusion in the Bill of amendments about trade union immunities.

(b) This extends question (a) to matters on which the Government have announced their intention to introduce a Bill before Parliament.

Scottish Affairs Committee

4. The Select Committee on Scottish Affairs took evidence from officials on 19 December on the question of rate support grant, with particular reference to the economic assumptions underlying the 1980-81 settlement (eg anticipated wage costs, inflation rates, etc). The relevant Affirmative Order is to be debated in January. It is understood that the Committee regarded the session as educative in preparation for the debate on the Floor of the House. The nature and tone of the questioning generally reflected this intention.

(c) Should evidence in future be given on matters which are the subject of statutory instruments awaiting Parliamentary debate?

Home Affairs Committee

5. The Committee has set up a Sub-Committee on Race Relations and Immigration. It has decided to undertake a short enquiry into the legal implications, with respect to the European

Convention on Human Rights, of the proposed new immigration rules. The Sub-Committee asked for evidence from Home Office officials, accompanied if possible by one of the Law Officers or their officials. Home Office officials, including members of the Home Office Legal Advisers Branch (but not the Law Officers or their officials) gave evidence on 20 December. The Sub-Committee appear to be anxious to establish what legal advice was given to Ministers about any possible conflict between the proposed new immigration rules and the European Convention, but no information has been given to them on this point.

|| (d) The first issue is the confidentiality of the opinions of the Law Officers; and the second is whether the advice of officials (including legal advice) to Ministers should remain confidential.

Yes not

Treasury and Civil Service Committee

6. The Treasury and the Civil Service Department have been asked on behalf of the Select Committee which public bodies they regard as covered by the phrase "associated public bodies" in the Committee's terms of reference.

(e) How should Departments respond when faced with such questions?

7. The Committee and the Public Accounts Committee are each currently considering a paper on the treatment in estimates of Civil Service pay increases submitted to them jointly by the

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Treasury and the Civil Service Department. Evidence was taken from officials by both Committees in successive weeks. Neither has yet responded to the paper and some delay appears to have occurred as each Committee speculates on the other's likely reaction. This illustrates the potential overlap between the work of a Select Committee and that of the Public Accounts Committee, but no question for Ministerial decision arises at this stage.

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✓ MS

QUEEN ANNE'S GATE LONDON SW1H 9AT

10 January 1980

Dear Paul

SELECT COMMITTEES: REVISED MEMORANDUM OF GUIDANCE

Thank you for your letter of 21 December in which you seek approval to the issue of a revised version of the Memorandum of Guidance to officials who are called on to give evidence to Select Committees.

I agree that the revised Memorandum should be issued without further delay. I also agree that a copy should be sent to the Liaison Committee for information. It will be useful for the Select Committees to be reminded of this guidance and particularly, so far as the Home Office is concerned, of what the Memorandum says on security matters in paragraphs 24 and 43-46 and in Appendix C, and on advice given by the Law Officers in paragraphs 25 and 31. On the first point it would be worth referring in the Memorandum to the letter sent on 9 May, 1967 to the Chairmen of certain Select Committees by Mr. Crossman as Lord President of the Council and Leader of the House of Commons. This letter has the merit of stating expressly that "information affecting national security" may be withheld from a Select Committee. As you will recall, the text of this letter was reproduced in the First Report from the Select Committee on Procedure, and the Report itself recognised the point (paragraph 7.13).

As to discussion by Select Committees of legislative proposals, I sympathise with the view that concurrent examination of such proposals by a Select Committee and by

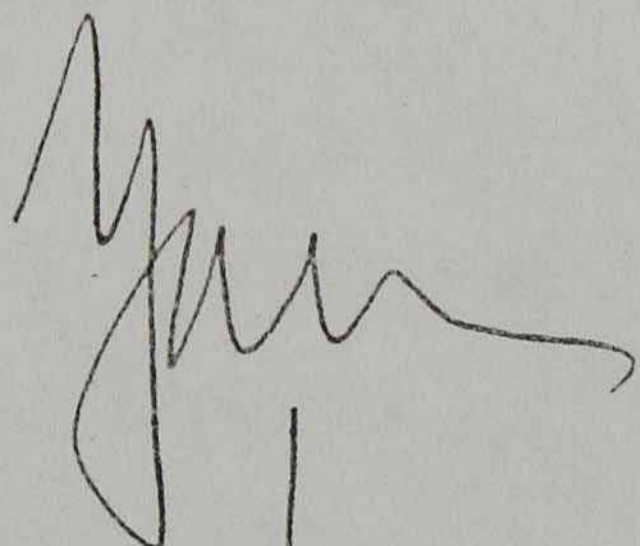
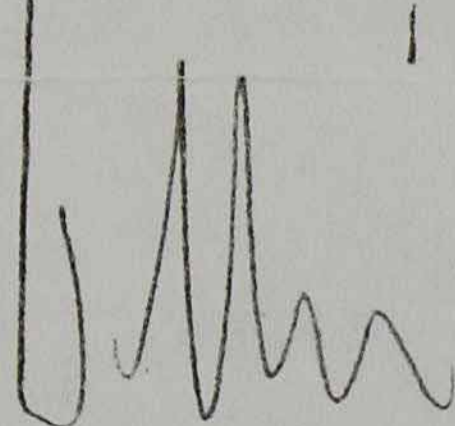
Paul Channon, Esq., M.P.

/a Standing

a Standing Committee of the House should if possible be avoided, if only because of the duplication of effort involved. But I agree that the Memorandum of Guidance for Officials is not the place in which to settle this. Certainly the omission of statements in the previous Memorandum about discussion by Select Committees of legislative proposals should not be interpreted as implying that we are committed to accept any of the Procedure Committee's recommendations in this area.

I agree with you about the timing of replies to Select Committee reports. The two months limit does not take account of the practical constraints, but I accept that the line taken in paragraphs 57-58 of the Memorandum is the right one. There is no point in pursuing this matter further until we see how the new Committees approach the matter of reports.

I am sending copies of this letter to Ministers in charge of Departments, and to Sir Robert Armstrong.

10 JAN 1980



16 JAN 1980





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VMS

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

Paul Channon Esq
Minister of State
Civil Service Department
Whitehall
LONDON SW1A 2AZ

10 January 1980

Dear Paul,

SELECT COMMITTEES: REVISED MEMORANDUM OF GUIDANCE

I have no comments on the draft memorandum of guidance for officials appearing before select committees attached to your letter of 21 December to the Chancellor of the Duchy of Lancaster. I am glad that we will be able to present the memorandum as being essentially the same as the document scrutinized by the Procedure Committee three years ago.

As for the problems arising from concurrent select committee and standing committee examinations of legislative proposals, I agree that the memorandum will have to omit the references made in the 1976 draft; and I understand that we are shortly to have a discussion among colleagues of the points raised in Michael Heseltine's letter of 12 December to Norman St John-Stevas. Although the topics chosen by the Select Committee on Education, Science and Arts for its first inquiries are unlikely to cause us problems on this score, I hope agreement can be reached on guidelines which will prevent the difficulties identified by Michael Heseltine from arising in future.

Yours ever

Mark

MARK CARLISLE

10 JAN 1980



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Oddi wrth Ysgrifennydd Gwladol Cymru

From The Secretary of State for Wales

The Rt. Hon. Nicholas Edwards, MP.

De Paul

7 January, 1980.

SELECT COMMITTEES: REVISED MEMORANDUM OF GUIDANCE

Thank you for the copy of your letter of 21 December to Norman St John Stevas about the revised Memorandum of Guidance for officials appearing before Select Committees.

I am content that a revised Memorandum, as in the draft attached to your letter, should be issued. I also agree with the way you propose to handle the Liaison Committee's interest in the Memorandum.

I am copying this letter to the recipients of yours.

J em

Ned

Paul Channon, Esq., MP,
Civil Service Department,
Whitehall,
LONDON SW1A 2AZ



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Paul G Channon Esq MP
Minister of State
Civil Service Department
Whitehall
LONDON SW1

7 January 1980

Dear Paul

SELECT COMMITTEES: REVISED MEMORANDUM OF GUIDANCE

In your letter of 21 December to Norman St John Stevas you asked for observations by colleagues on this revised Memorandum. I have none to offer and am content with the way in which you propose to deal with the three specific points you raise.

I am sending copies of this letter to the recipients of yours.

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1-8 JAN 1980



Civil Service Department
Whitehall London SW1A 2AZ
Telephone 01-273 3000

Minister of State

The Rt Hon Norman St John Stevas MP
Chancellor of the Duchy of Lancaster
Cabinet Office
Whitehall
LONDON SW1

21 December 1979

John Norman

Mr Sinden *of*

B/F to MS on 7/1/80
MS

SELECT COMMITTEES: REVISED MEMORANDUM OF GUIDANCE

As you may know, a Memorandum of Guidance for officials appearing before Select Committees is issued by the Civil Service Department with the collective approval of Ministers. The most recent version was circulated in 1976 and was reproduced verbatim in Appendix D of the Procedure Committee's First Report for 1977-78. Since then the new structure of departmental Select Committees, and parts of the Procedure Committee's report itself, have made it necessary to bring the guidance up-to-date. I attach the draft of a revised version. This sidelines the main changes compared with the published Memorandum and indicates where material has been omitted. The draft has been the subject of extensive consultations at official level with all major departments. I should now be grateful for colleagues' approval to the issue of a new Memorandum on the lines of the present draft.

The Procedure Committee published the existing Memorandum without any adverse comment except on two specific points which have been reflected in the draft revision and can be regarded as having given it their implicit approval. In view of this, it would be preferable to leave it unaltered as far as possible. The changes which have been made in the present draft are confined to:

- a. factual up-dating (eg paragraphs 4-5 about the new departmental committees and their terms of reference) and other consequential amendments;
- b. changes in the light of the Procedure Committee's report (eg paragraphs 6-9 about powers of Committees and the summoning of officials); and
- c. minor editing, corrections and clarifications.

I think we shall be able to argue that this is in essence the same document as the one which the Procedure Committee examined. There are two points to which I should draw attention.

First, the draft omits statements in the previous Memorandum, about discussion by Select Committees of legislative proposals, including an observation that "The Select Committees do not normally consider topics on which the Government have already undertaken to legislate". The Procedure Committee recommended that:

- "Committees [ie departmental Select Committees] should also be free to consider proposals for primary legislation at any stage during its progress through Parliament, including the Green Paper and White Paper stage, and to bring their views to the attention of the House or of the relevant legislative committees".

(The Procedure Committee's Recommendation 5, on powers of Standing Committees to take evidence in Select Committee style, is also of relevance.) The point is one of current concern in view of the developments referred to by Michael Heseltine in his letter to you of 12 December about the Environment Select Committee (and I have a good deal of sympathy with the points which he makes about the undesirability of concurrent Select Committee and Standing Committee examinations of legislative proposals). The Memorandum of Guidance is obviously not the place to settle either way important questions of Bill procedure which have not so far been considered in detail either by Ministers or by the House. I do not think that the simple omission of the previous references could reasonably be interpreted as implying a commitment on the part of Ministers to accept all or any of the Procedure Committee's recommendations in this area.

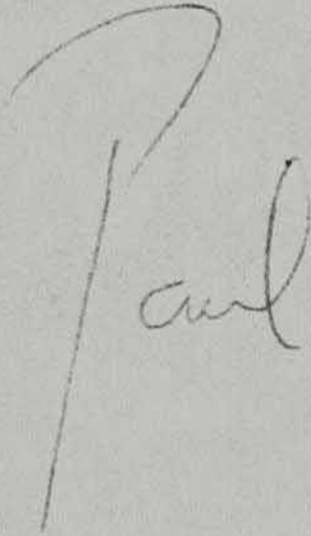
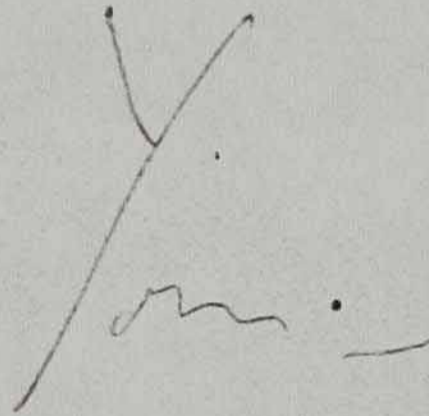
Secondly, the Procedure Committee recommended (Recommendation No 45) that replies should normally be made to Select Committee reports within two months. Without expensive special measures, a Command Paper can take about three weeks simply to print, and it is in the interest of Committees themselves that there should be adequate time to prepare a considered reply, so the recommendation is a somewhat unreasonable one. But since the Procedure Committee disregarded the practical constraints of which they have already been reminded (eg in paragraphs 54-55 of the published Memorandum), paragraphs 57-58 of the present draft simply record the Procedure Committee's recommendation and undertake that departments will do their best to be guided by it. I do not think that we specifically want to take issue on the point.

There remains the question of consultation with the Liaison Committee on the new version of the Memorandum. I understand that the Committee has yet to be reappointed, and clearly it would be desirable for revised guidance to be issued soon to departments, now that the new Committees are underway. My own preference would be for the revised Memorandum to be issued as soon as its text had been cleared with colleagues, without waiting for prior consultation with the Liaison Committee. It would then be for consideration whether the Memorandum should be sent to the Committee

for comment, or for information, or only if and when they ask to see it. My own preference would be "for information"; but that is very much a matter for your judgement, and I should particularly welcome your comments on the handling of the Committee's interest.

I should be grateful to have any observations from colleagues not later than 11 January.

I am sending copies of this letter and enclosure to Ministers in charge of departments and to Sir Robert Armstrong.



PAUL CHANNON

SELECT COMMITTEES - MEMORANDUM OF GUIDANCE FOR OFFICIALS

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DRAFT (REVISED)

SELECT COMMITTEES

MEMORANDUM OF GUIDANCE FOR OFFICIALS

INTRODUCTION

This note is intended to give guidance to officials who may be called to give evidence before, or to prepare memoranda for submission to, Parliamentary Select Committees. It supersedes General Notice GEN 76/78 and Addendum and General Notice GEN 78/11.

While it is primarily intended to cover the Select Committees of the House of Commons, it is also generally applicable to Select Committees of the House of Lords. It may not always be literally applicable to the Public Accounts Committee, in view of the special position of Accounting Officers and the access of the Comptroller and Auditor General to departmental records. Supplementary guidance on the procedure to be followed in respect of the Commons Select Committee on European Secondary Legislation (and the corresponding House of Lords

Select Committee on the European Communities) and on the handling of European Community documents is issued separately by the Cabinet Office. Guidance in dealing with the Joint and Select Committees on Statutory Instruments is provided in the "Handbook on Statutory Instrument Procedure".

SELECT COMMITTEE SYSTEM

General Description

2. The scope of the Select Committee system of the House of Commons has varied from time to time. The significance of the title is that the Committee's membership is "selected" for a particular task, generally of inquiry. The main practical House distinction lies between such Committees, with their role of investigation and scrutiny, and "Standing Committees", concerned with the examination of particular legislation and with their procedure based on debate rather than the taking of evidence. Some Select Committees (hereafter referred to as "Committees") are embodied in the Standing Orders of the House. Others are on a sessional basis, and can be established and their work completed within a matter of weeks or months. Some are committees with a purely House function (eg the Committee of Selection), with which Departments will not normally come into contact. The principal Commons Select Committees with which this memorandum is concerned are those related to Government Departments (see paragraph 4); the Public Accounts Committee; the Committee on the Parliamentary Commissioner for Administration; the Committee on European Secondary Legislation; and the Services Committee (concerned with House administration). Certain co-ordinating functions on behalf of the various Commons Committees are carried out by a liaison committee; the normal Government contact with this is through the Leader of the House.

3. In the House of Lords, the European Communities Committee and its Sub-Committees regularly seek written and oral evidence from Departments. There is a sessional Select Committee on Science and Technology with power to appoint sub-committees and to co-opt further members for this purpose. In addition there is generally one ad-hoc Select Committee in the Lords (at present the Select Committee on Unemployment) which takes evidence from Departments.

[Para 3 of GEN 76/78 omitted.]

Powers of the Committees

6. Select Committees (and their sub-committees) normally have the power to "send for persons, papers and records". This power is understood as a power to "order" the attendance of persons and the submission of papers, but its interpretation and its application to Ministers are examined in detail in the memorandum by the Clerk of the House which was reproduced at Appendix C to the First Report from the Select Committee on Procedure, Session 1977-78.

7. Any official who appears before a Select Committee or who submits papers to it does so on behalf of his Minister. As the Procedure Committee emphasised in their Report :

"The overriding principle concerning access to government information should be that the House has power to enforce the responsibility of Ministers for the provision of information or the refusal of information. It would not, however, be appropriate for the House to seek directly or through its committees to enforce its rights to secure information from the Executive at a level below that of the ministerial head of the department concerned (normally a Cabinet Minister), since such a practice would tend to undermine rather than strengthen the accountability of Ministers to the House".

In practice, Committees normally proceed on the basis of "requests" for departmental witnesses and evidence rather than through the exercise of formal powers.

8. It should be noted that, in addition to examining the expenditure, administration and policy of Government Departments and associated public bodies, Select Committees are free to call for evidence from whomsoever they please, and are entitled to require the production of papers by private bodies or individuals so long as these are relevant to the Committees' work.

Summoning of Named Officials

9. Since officials appearing before Select Committees do so on behalf of their Ministers, it is ultimately for Ministers to decide which officials appear to give evidence. Official evidence to Committees is normally given by officials (including members of the Armed Services) specifically nominated by Departments for this purpose. Committees have in the past generally accepted this position. If, however, a Committee summoned by name any other official to appear, it would be open to the Minister responsible either to offer to give evidence himself or to nominate an official to give evidence on his behalf. If a Committee insisted on a particular official appearing before them, it would be for Ministers to decide what course to follow. The considerations referred to in paragraphs 6-7 above would be relevant.

Open Sessions

10. Select Committees often admit the public and Press to hearings, and it is possible that proceedings may be broadcast. Departments may wish to ascertain from the Clerk to the Committee beforehand whether particular proceedings are to be recorded. Arrangements for the treatment of confidential information in oral evidence are referred to in paragraphs 44-46 below.

[Para 6 of GEN 76/78 omitted.]

Liaison Officers

11. Departments may wish to consider appointing a liaison officer to be the main channel for communications between the Department and the Select Committee and its Clerk. The Clerks to the Select Committees will usually be glad to talk informally to Departments about their Committees' work and to co-operate by, for example, providing the Departments most concerned with the confidential proofs of evidence taken by the Committee.

Committee Staff

12. Responsibility for staffing support for Committees rests with the House of Commons Commission. The departmental Committees have, however, been given power to appoint "persons with technical knowledge" either to supply information which is not readily available or to elucidate matters of complexity within the Committees' orders of reference. The Committees will thus be able if they wish to retain the services of experts, not only to assist with particular enquiries but to advise on future enquiries or to deal with problems arising in the course of enquiries. If Departments are asked by Committees to undertake research work or surveys on their behalf, it may be possible to meet such requests by the utilisation of existing information, modified as appropriate. But if the new work involved is likely to be substantial, and the Committee has power to appoint its own specialist advisers, it may be appropriate to suggest to the Committee that they consider this alternative, or possibly the employment of private research agencies or universities.

Travel Overseas

13. Committees may wish to travel abroad, and to take evidence in extra-territorial conditions. It has been informally agreed with the Clerk of the House that "early warning" will be given at the official level if a Committee contemplates foreign travel, but Departments should ensure that the Foreign and Commonwealth Office is informed as soon as it is known that a Committee is proposing to travel overseas. Departments may obtain advice on proposals by Committees to travel abroad from the Foreign and Commonwealth Office (Parliamentary Commissioner and Committees Unit, 233 3952 or 233 3542).

[Reference to travelling expenses in para 9 of GEN 76/78 omitted.]

Ministerial Statements

14. It is desirable for Committees to be given warning where possible about impending Ministerial statements on matters which are relevant to specific enquiries which Committees are currently undertaking. A convenient method is by way of notification to the Clerk at the same time as the Whips inform the Opposition, which is normally at noon on

Committees Related to Government Departments

4. The Committees related to Government Departments and the principal Departments concerned are:

| | |
|--------------------------------|--|
| Agriculture | Ministry of Agriculture, Fisheries and Food |
| Defence | Ministry of Defence |
| Education, Science and Arts | Department of Education and Science |
| Employment | Department of Employment |
| Energy | Department of Energy |
| Environment | Department of the Environment |
| Foreign Affairs | Foreign and Commonwealth Office |
| Home Affairs | Home Office |
| Industry and Trade | Department of Industry, Department of Trade |
| Social Services | Department of Health and Social Security |
| Transport | Department of Transport |
| Treasury and Civil Service | Treasury, Civil Service Department, Board of Inland Revenue, Board of Customs and Excise |

There is also a Committee on Scottish Affairs related to the Scottish Office and a Committee on Welsh Affairs related to the Welsh Office. The Committees on Foreign Affairs, Home Affairs and the Treasury and Civil Service each have power to appoint one investigative sub-committee. A joint sub-committee may be set up from time to time to consider any matter affecting two or more nationalised industries, with members drawn from the departmental Committees concerned. Matters within the responsibilities of the Secretary of State for Northern Ireland will be considered by the existing Committees as necessary.

5. The general terms of reference of these Committees are as set out in Standing Order No. 7 (Appendix A of this Memorandum). * The Committees are entitled to examine the expenditure, administration and policy of the principal Government Departments, and also of their "associated public bodies". The terms of the Standing Order do not define "associated public bodies" but the Chancellor of the Duchy of Lancaster said in his speech on 25 June 1979 that:

"The Government also accept the Procedure Committee's view that the Committees must be able to look at the activities of some public bodies that exercise authority of their own and over which Ministers do not have the same direct authority as they have over their own Departments. The test in every case will be whether there is a significant degree of ministerial responsibility for the body concerned".

Associated public bodies therefore include all nationalised industries, fringe bodies and other Governmental organisations within the responsibilities of the Department or Departments concerned for which Ministers are ultimately answerable. They do not, however, include bodies for which Ministers are not answerable to Parliament, even though these bodies may be in receipt of Government funds. There will no doubt be borderline cases, but in general the existing principles of Parliamentary accountability can be applied.

* See note on p. 18.

the day of the statement. This notification to the Clerk would be of the fact that the statement is to be made, but not including the text of the statement itself.

PROVISION OF EVIDENCE

General

15. The general principle to be followed is that it is the duty of officials to be as helpful as possible to Committees, and that any withholding of information should be limited to reservations that are necessary in the interests of good government or to safeguard national security. Departments should, therefore, be as forthcoming as they can (within the limits set out in this note) when requested to provide information whether in writing or orally. This will also help to secure that the reports of Committees are as soundly based on fact as possible. Oral evidence is recorded verbatim. When oral evidence is to be given, it is advisable for Departments to send at least 2 witnesses so that they can divide between themselves the responsibility for answering questions. Because officials appear on behalf of their Ministers, Departments might want to clear written evidence and briefing with Ministers. It may only be necessary for Ministers to be consulted should there be any doubt among officials on the policy to be explained to the Committee. However, Ministers are ultimately responsible for deciding what information is to be given and for defending their decisions as necessary, and Ministers' views should always be sought if any question arises of withholding information which Committees are known to be seeking.

Accuracy of Evidence

16. Officials appearing before Select Committees are responsible for ensuring that the evidence they give is accurate. They are reminded to take particular care to see that they are fully and correctly briefed on the main facts of the matters on which they expect to be examined. Should it nevertheless be discovered subsequently that the evidence unwittingly contained errors, these should be made known to the Committee at the earliest possible moment.

Informal Discussions

17. Some Committees may occasionally conduct informal discussions in addition to taking formal evidence. When that occurs officials should apply the same considerations as apply to formal evidence, because the supply of information informally can affect a Committee's report as much as formal evidence.

Status of Information Supplied

18. Once information has been supplied to a Committee, it becomes "evidence" and, subject only to the arrangements governing classified information (see paragraphs 45-46), it is entirely within the competence of the Committee to report and publish it or to refrain from doing so. Letters addressed to the Clerk of the Committee, however informal, are strictly speaking "evidence" and liable to be published.

Inter-Departmental Liaison

19. Generally speaking the subjects of enquiry by Select Committees will fall clearly within the responsibilities of particular Departments. Occasionally, however, problems may arise when Committees enquire into subjects where departmental responsibility is not self-evident. The aim must be to ensure that Committees direct their questions on each aspect of such subjects to the Department chiefly concerned with that aspect, and do not question Departments whose role is that of co-ordination about matters which go outside that role. This indicates that where in such cases the Committee needs a memorandum covering the interests of several Departments, it may be better for this to be submitted by the

Department with the predominant role in the field concerned (rather than by a co-ordinating office such as the Cabinet Office). If the Committee then ask that Department questions (whether in writing or orally) proper to some other Department, they can be re-directed.

20. In these cases it is clearly desirable for all the Departments concerned, in accordance with normal procedure, to keep in touch in the preparation of their evidence - eg by exchanging drafts. Where there is no co-ordinating machinery already available for this purpose it may be best for the Department with the predominant role to act as a central point. Since there is no separate Select Committee for Northern Ireland, a Department with this role should particularly ensure that Northern Ireland interests are taken into account as necessary. It is important that Departments should clear with any other Department which may have an interest both memoranda and the line to be taken in oral evidence, even if the time for this is short.

21. Greater difficulties may arise when the subject under enquiry is one in which no Department can be said to have a predominant interest; where in such cases the Committee needs a memorandum covering the interests of several Departments - eg setting out the range of Government activities in the field concerned - it may well be necessary for the body which co-ordinates Government action in that field to submit it. It seems desirable, however, so to organise such memoranda as to indicate, for each aspect covered, which Department is primarily responsible and at least by implication the limitations of the co-ordinating responsibility. This should assist the Committee in summoning the witnesses appropriate to the aspects they wish to investigate at each session; and if the questions asked are misdirected, no doubt the witnesses will say so.

22. Normally the Cabinet Office and other similar co-ordinating offices will not be required to give evidence to a Committee, but the Central Policy Review Staff may give evidence about their published work. Requests for CPRS evidence on other matters, and requests for other evidence from co-ordinating offices such as the Cabinet Office and "non-departmental" units or officials, should be referred to Ministers. A Committee might seek evidence from a particular official (for example the head of the Government Statistical Service)

who is not directly answerable to a departmental Minister but who in his professional capacity has a special knowledge of the subject of an enquiry. In these cases too, Ministerial approval is required before an invitation to give evidence is accepted.

LIMITATIONS ON THE PROVISION OF INFORMATION

General

23. Committees' requests for information should not be met regardless of cost or of diversion of effort from other important matters. It might prove necessary to decline requests which appeared to involve excessive costs. It may be necessary for a Department to consult their Minister if a particular request seems to involve an unreasonable amount of extra work.

24. Guidance on the release of classified information to Committees is given in the manual "Security in Government Departments". This manual is the overriding authority; what follows must be read subject to its guidance. Officials must not disclose information which the manual says

must be withheld; they should consult their Departmental Security Officers if in doubt.

written

25. Officials should not give/evidence about or discuss the following topics:

- i. In order to preserve the collective responsibility of Ministers, the advice given to Ministers by their Departments should not be disclosed, nor should information about interdepartmental exchanges on policy issues, about the level at which decisions were taken or the manner in which a Minister has consulted his colleagues. Information should not be given about Cabinet Committees or their discussions (see paragraphs 26-28).
- ii ~~iii~~. Advice given by a Law Officer (see paragraph 31).
- iii ~~iv~~. The private affairs of individuals or institutions on which any information held by Ministers or their officials has been supplied in confidence (including such information about individuals which is available to the Government by virtue of their being engaged in or considered for public employment).

Officials should also, where possible, avoid giving written evidence about or discussing the following matters. Where appropriate further guidance is provided in the succeeding paragraphs:

- iv ~~ii~~. Questions in the field of political controversy (see paragraphs 29-30).
- v. Sensitive information of a commercial nature, eg knowledge which could affect the financial markets, without prior consultation with the Chancellor of the Exchequer; sensitive information relating to the commercial operations of nationalised industries, or to contracts; commercial information which has been given to the Government in confidence, unless the advance consent of the persons concerned has been obtained (but see paragraph 48 on the kind of contract information which may, in certain circumstances, be provided).
- vi. Matters which are, or may become, the subject of sensitive negotiations with governments or other bodies, without prior consultation with the Foreign and Commonwealth Secretary, or in relation to domestic matters the Ministers concerned (see paragraph 32),
- vii. Specific cases where the Minister has or may have a quasi-judicial or appellate function, eg in relation to planning applications and appeals, or where the subject-matter is being considered by the Courts or the Parliamentary Commissioner (see paragraphs 33-34).

[reference to legislative proposals omitted; also paragraph 29 of GEN 76/79].

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Community,

Where, exceptionally, matters such as iv-vii have to be discussed, application may be made for "sidelining" (see paragraph 46). There is no objection to saying in general terms why information cannot be given and it is very unusual for a Committee to press an official who indicates that he is in difficulty on such grounds in answering a question. If however this happens, it may be best to ask for time to consider the request and to promise to report back. Paragraphs 6-7 should be referred to.

Collective Responsibility

26. Departmental witnesses, whether in closed or open session, should preserve the collective responsibility of Ministers and also the basis of confidence between Ministers and their advisers. Except in a case involving an Accounting Officer's responsibility (see C8 and 9 of "Government Accounting") the advice given to Ministers, which is given in confidence, should not therefore be disclosed, though Departments may of course need to draw on information submitted to Ministers. It is necessary also to refuse access to documents relating to inter-departmental exchanges on policy issues. Equally the methods by which a current study is being undertaken, eg by the Central Policy Review Staff, should not normally be disclosed **without the authority of Ministers, unless they have already been made public.** Nor should

Departments reveal the level at which decisions were taken. This is a factor which may need to be borne in mind when deciding whether particular witnesses should appear, or should appear separately (see paragraph 9). It should also be borne in mind that decisions taken by Ministers collectively are normally announced and defended by the Minister responsible as his own decisions, and it is important that no indication should be given of the manner in which a Minister has consulted his colleagues (see also paragraph 31 on the special position of the Law Officers).

27. In no circumstances should any Committee be given a Cabinet paper or extract from it, or be told of discussions in a Cabinet Committee. Nor should information be given about the existence, composition or terms of reference of Cabinet Committees, or the identity of their chairmen, beyond that information disclosed by the Prime Minister in answer to a Parliamentary Question on 24 May 1979 (see Appendix B), and if witnesses are questioned on such matters they must decline to give specific answers. There is, however, no objection to pointing out in general terms that consultation between Departments runs through the whole fabric of government and occurs at all levels both official and Ministerial.

28. Departmental files will tend to concern the matters referred to in paragraph 25 above, and if in doubt Departments should consult their Ministers, and should also advise the Civil Service Department when meeting or refusing any request by a Committee to see or have quoted verbatim any inter-departmental correspondence or internal minutes. The PAC is in a special position in view of the C & AG's access to departmental papers, and in considering any request from it for access to departmental papers the Treasury should be consulted in addition to the Civil Service Department. In the special case of the Select Committee on the Parliamentary Commissioner, it may be necessary to quote from departmental documents in connection with Parliamentary and Health Service Commissioner cases. But it is not the practice of the Committee to require evidence which would amount to the "re-trial" of a Parliamentary or Health Service Commissioner case.

Policy

29. Official witnesses, whether administrative, professional or Services, should as far as possible confine their evidence to questions of fact relating to existing Government policies and actions. Officials should be ready to explain what the existing policies are and the objectives and justification, as the Government sees them, for those policies, and to explain how administrative factors may have affected both the choice of policy measures and the manner of their implementation. It is open to officials to make comments which are not politically contentious but they should as far as possible avoid being

drawn, without prior Ministerial authority, into the discussion of alternative policy. If official witnesses are pressed by the Committee to go beyond these limits, they should suggest that the questioning be addressed, or referred, to Ministers. If there is a likelihood of a material issue of policy being raised by a Committee in its questioning of official witnesses, Departments will wish to consult Ministers beforehand. (On appearance by Ministers, also see paragraphs 6-7).

30. A Select Committee may invite specialist (as opposed to administrative) civil servants to discuss the professional or technical issues underlying controversial policies. This may raise particular problems in the case of, for example, economists, if Committees discuss issues of economic reasoning which bear upon controversial policy questions and which are also matters of technical and professional controversy among economists. When this is so, and where Economic Advisers to the Government appear as official witnesses, they may find themselves in the difficulty that their own judgement on the professional issues has, or might easily appear to have, implications critical of the Government's policies. It is not open to them to explain the advice which they have given to the Government on such a matter, or would give if asked by the Government. They cannot therefore go beyond

explaining the economic reasoning which, in the Government's view, justifies their policy. This will only be possible where the underlying theory has indeed been explicitly formulated; and the status of what was being presented would have to be made clear.

~~b. explaining the state of knowledge and opinion of a subject among professional economists, presenting a fair balance of views and referring (as under paragraph 29) to the public evidence of the Government's view.~~

If there is no quotable public evidence of / a Government view and the witness is asked for his own professional judgement on the issue, or his judgement of the view that the Government would be likely to take, he should refer to the political nature of the issue and suggest that the questioning be addressed or referred to Ministers. Similar considerations apply in the case of other specialist civil servants.

Advice Given by a Law Officer

31. There should not be disclosed to a Committee any advice that may have been given by the Law Officers. There is a well established convention that the advice which Law Officers give to Ministers is confidential. It is only when Law Officers expressly authorise the disclosure of that advice, or themselves report to or advise Parliament or a Committee, that such advice is revealed.

International Relations

32. Negotiations with other Governments are normally conducted in strict confidence. Officials should take care in discussing or giving written evidence on matters which may affect relations with other Governments or bodies, or relations between British officials and those of other Governments. Texts of communications between Governments should be regarded as confidential and should not be submitted as evidence without prior approval of the Minister concerned.

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Matters Sub-Judice

33. Committees are subject to the rules by which the House regulates its own conduct and that of its Members. It is normally possible to work on the assumption that if a matter already before the Courts seemed likely to come up for discussion before a Committee, the staff of the House would have drawn the attention of the Chairman to the relevant rules of the House relating to discussion of sub-judice questions. But the Chairman has an overriding discretion to determine what is appropriate in the hearing of evidence.

34. Officials should take care in discussing or giving written evidence on matters which may become the subject of litigation but which as yet do not strictly come under the rules which preclude discussion on sub-judice questions. Such caution should be exercised whether or not the Crown is likely to be a party to the litigation. If such matters seem likely to be raised when a Committee takes evidence, officials should first consult with their own departmental solicitor or the Treasury Solicitor for advice on how to handle the questions which might arise.

Reports Commissioned by Departments

35. On a number of occasions Committees have made requests to see copies of reports commissioned by Departments. These requests can often cause particular difficulty. Such reports may come from a variety of sources, ranging from the purely internal working group to the major outside Committee, but where publication was not intended. The fact that a report is known to have been prepared does not of itself oblige a Department to reveal its contents. In deciding whether to accede to requests for particular reports the primary consideration must always be the contents of the document concerned, ie whether it contains classified information or information of the kinds discussed elsewhere in this memorandum which should not normally be disclosed.

36. In addition the following considerations may be relevant:

- i. While Select Committees should not press for internal advice to Ministers to be revealed, they are less likely to accept without argument a refusal to reveal a report from a departmental committee containing outside members, and even less likely to accept a refusal in the case of a wholly external committee. In particular, they will be understandably reluctant to accept a refusal where the establishment of the committee in question has been announced, together with its membership and terms of reference, and where its report is known to exist. These implications need to be taken into account in deciding how much publicity should be given to the establishment of committees of this kind.
- ii. In particular cases Departments may consider that, while a report cannot be published, it would be helpful to provide it to a Committee, provided it was treated in confidence (see paragraph 43).
- iii. In certain cases, where a Select Committee might reasonably expect to receive a certain amount of detailed information, Departments may be able to provide a written memorandum in place of the report itself. If Departments can assist Committees in this way, it is generally desirable to do so.

- iv. Departments should normally seek the views of Ministers before refusing a request from a Select Committee for a particular report, since the Minister might be called on to defend the decision to the Committee personally.

Documents Relating to the Internal Administration of Government

37. The Procedure Committee recommended that:

"Select committees should regard any refusal by Government departments to provide information relating to departmental or inter-departmental organisation - unless fully explained and justified to their satisfaction - as a matter of serious concern which should be brought to the attention of the House".

A considerable amount of information about the internal distribution of business is already available in published form (eg in the Civil Service Year Book), and the normal presumption should be that more detailed information about Departments' organisational structure, such as directories and organisation charts, should be provided to Committees if it is requested. Where a description of duties of a sensitive nature necessitates the revelation of classified information, the considerations relating to classified documents (see paragraphs 43-46) should apply.

38. Requests for documents which go beyond a description of the existing organisation of the Department and deal with methods of organisation (eg arrangements for formal and informal co-ordination or for delegation of authority) or with reviews of existing departmental organisation or methods may raise more difficult questions. Even here, however, the presumption should be that information should not be withheld unless it would conflict with the guidance in paragraph 25 above. Ministers should be consulted in any case where it is proposed that information of this kind requested by a Committee should be withheld.

Except where particular arrangements have been made public, for example the organisation set up to support the Inner City partnerships, information about interdepartmental organisation may present more difficulty (see paragraphs 26-27).

[This section replaces paras 32-34 of GEN 76/78.]

Documents of a Previous Administration

39. There are well established conventions which govern the withholding of policy papers of a previous Administration from an Administration of a different political complexion. Since officials appear before Select Committees as representatives of their Ministers and since Select Committees are themselves composed on a bipartisan basis, it follows that officials should not volunteer to a Select Committee papers of a previous Administration which they are not in a position to show to present Ministers. If such papers are requested, the previous Administration should be consulted before these are shown either to present Ministers or, with Ministers' agreement, to a Select Committee.

TREATMENT OF EVIDENCE

Open Sessions

40. Unclassified memoranda prepared by Departments for a Committee may be published by the Committee before its full report is presented to the House, and may be available to the Press and public at the time of the related session. Open sessions of Committees often attract publicity since evidence before them may be reported forthwith by the Press. Departments are in these circumstances free to comment immediately to the Press on matters raised in their evidence. If a Select Committee takes evidence in public from a Minister or senior official, therefore, it may be considered desirable for a Press Officer also to attend, so as to be able to answer Press queries. Such Press briefing should not, however, extend to comment on matters of policy since such comment might be regarded as impeding the Committee in its task and hence as contempt. Care should be taken not to go beyond the evidence given by the Minister or official in commenting on any suggestion made by another witness, eg the Chairman of a Nationalised Industry, at the same hearing, or to disclose information not yet given publicly.

[Paragraph 37 of GEN 76/78 omitted.]

41. Written memoranda of evidence on which departmental witnesses are examined in public and which are included in the printed copy of the proceedings reported that day to the House, inasmuch as they may have been available to the public attending the session, may at the Department's discretion be issued to other interested parties thereafter. Copies of oral evidence given in public, however, should not be disclosed by Departments until the final published version is available, as the first copies are confidential proofs subject both to correction and to explanation by footnotes. Amendments to the proofs of evidence sent to witnesses by the Clerk cannot normally go beyond minor corrections of grammar and transcription, although the Chairman may be willing to consider suggestions about "sidelining" (see paragraph 46).

42. Evidence critical of a Department may be given in open session by persons outside the Department on occasions when departmental witnesses are not also present. In these circumstances Departments should not seek publicly to respond to such criticism outside the ambit of the Committee. Instead, the Chairman of the Committee concerned may be asked to consider inviting the Department to express its view also to the Committee as soon as possible.

Disclosure of Confidential Information in General

(see also Sir Douglas Allen's letter of 19 August 1975 to Heads of Departments about the disclosure of classified information to Select Committees, at Appendix C).

43. The general aim of Departments should be to assist Committees by disclosing to them whatever official information they may require for the carrying out of their Parliamentary functions, provided that there are not overriding reasons on security or other grounds for withholding such information. It may be, however, that particular information requested by a Committee, or other information which a Department considers might have a relevant bearing on a Committee's enquiries, should only be made available on the basis that it will not be published and will be treated in confidence. Where this is so, the Department should inform the Clerk to the Committee that the information can be made available only on this basis, explaining the reasons in general terms. Such information should not be made available until the Committee have agreed to treat it accordingly; or, in the case of information with no security classification, at least until the Department is satisfied that the Committee is prepared to agree to a reasonable degree of sidelining (see paragraph 46b.). The interpretation

of "evidence" at paragraph 18 should be noted in this context. In considering the submission of confidential evidence to a Committee, Departments should bear in mind that the final authority as to whether or not evidence shall be published rests with the Committee. Arrangements have occasionally been made whereby certain classified evidence is given only to a sub-Committee of a main Commons Select Committee. Formally, however, Departments should proceed on the basis that main Committees and sub-Committees represent a single entity. No evidence given to Committees in closed sessions (ie when the public and the Press are not admitted) should be disclosed by Departments before the evidence has been published by the Committee.

Disclosure of Confidential Information in Oral Evidence

44. It would clearly be inappropriate for any evidence which a Department wished to be treated as confidential to be given at a session of the Committee to which the public and Press are admitted. Accordingly, if it appears likely that topics to be discussed at a forthcoming public session of a Committee are such that the departmental witnesses would only be able to give substantive answers if they could be treated in confidence, the Department should write to the Chairman or the Clerk of the Committee explaining why this is so: in most cases it is likely that it would be appropriate for the departmental Minister to write to the Chairman. If, despite such an approach, a Committee questions an official witness in public session on what he considers confidential matters, or if such matters are raised unexpectedly, he should inform the Committee that he cannot answer the question on grounds of confidentiality: he should not himself suggest that the Committee should go into closed session. In certain technical fields (eg defence research) it may be useful for a Department to hold off-the-record "presentations" for Committee members.

Procedures for Avoiding Publication of Confidential Evidence

45. Where confidential written evidence is submitted to a Committee on the understanding that it will not be published, this understanding should be made clear in the covering letter to the Clerk of the Committee accompanying the evidence.

46. In the case of confidential evidence given orally to a Committee in closed session, the following procedures should be followed in order to ensure that such evidence is not made public:

- a. Information with a security classification - TOP SECRET, SECRET, CONFIDENTIAL, RESTRICTED. (See also Sir Douglas Allen's letter of 19 August 1975 to Heads of Departments, Appendix C)

In cases where information with a security classification is revealed to a Committee, the following procedure should be followed in order to prevent publication. (The disclosure of TOP SECRET information may only be made on the personal authority of the Minister concerned):

i. The witness, before leaving the Committee Room, should let the Clerk to the Committee know what portions of his evidence contain matters with a security classification.

ii. The Clerk will then instruct the shorthand writer not to send for printing the transcript of those portions, but instead to send 3 copies to the Clerk, (5 copies in the case of the Public Accounts Committee).

iii. The Clerk will send 2 copies to the witness, one for his retention; on the other he should mark any passage containing information which, in his opinion, it would be undesirable on grounds of security to print.

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Since this procedure involves delay in the printing of evidence, it should only be used where strictly necessary.

b. Other confidential information

If a Department propose to reveal confidential (but not classified) information which, in the view of the Department, it would not be desirable on grounds other than security to include in the published evidence, they should first ask the Committee to agree that it should not be published or at least be certain that the Committee is prepared to agree to a reasonable degree of sidelining. Procedures on the lines of a. above will then be followed, and the attention of the Clerk to the Committee should be drawn to passages marked in accordance with the procedure at a. but which do not have a security classification (see also paragraph 25). Alternatively it may be sufficient to settle the details of sidelining at a later stage when the proof of evidence is available from the Clerk.

It should be noted that Select Committees may sometimes challenge a request for sidelining, and officials must always be sure that they can justify such a request if they make one. Challenges are more likely to arise, and sidelining is likely to be more difficult to defend, in the case of b. above than where the information has a standard security classification.

EVIDENCE FROM OTHER BODIES

47. Committees may, as stated in paragraph 5 above, call for evidence from non-departmental bodies for which Departments have responsibility. If a Department becomes aware that a non-departmental body for which it is responsible has been invited to give evidence, it may wish to consider whether it would be advisable to discuss the lines of evidence with the witnesses before the hearing. The Department may also wish to seek the Committee's agreement to their being represented at the hearing: whether this is allowed is entirely a matter for the Committee.

48. Committees may occasionally call for evidence from commercial firms, particularly those handling Government contracts. A contractor is normally prohibited from publishing without written consent the details of Government contracts. Departments may have to discuss with firms how far the former can provide a Committee with a general picture of their work without going into the details of specific contracts. Sensitive information of a commercial nature should not be disclosed (see paragraph 25(v)).

49. The normal relationship between Departments and non-departmental bodies or private firms may be sufficient to ensure an awareness on the part of witnesses from these bodies of the need to deal with the Committee's enquiries in a manner consonant with the rules about the security of classified information etc. To the extent that this is thought not to be sufficient, however, Departments

should take steps to ensure that classified information in any evidence given by witnesses from these bodies is protected (see also paragraphs 35-36 about reports commissioned by Departments).

50. Departments may also wish to ask non-departmental bodies for which they have responsibility to show them written evidence or replies in draft before submitting them. The purpose of this would be consultative, under the normal arrangements which may be expected to exist between Departments and such bodies for consultation on matters of importance; the bodies would, of course, remain free to express their independent views, subject to their statutory or contractual responsibilities and subject to there being no questions of security involved. It is usual practice for sponsor Departments and nationalised industries to see each other's initial memoranda. It should be noted that the Procedure Committee have recommended that memoranda by

Government Departments and non-departmental bodies should include a declaration of the persons and organisations with whom consultations have taken place prior to their submission. This recommendation should be drawn to the attention of non-departmental bodies when such consultations take place; and departmental memoranda which have been shown in draft to non-departmental bodies should include a statement of the bodies concerned.

DEPARTMENTAL REPLIES

51. Interested Departments and the Press normally receive advance copies of the Reports of Select Committees 48 hours before publication; the power for Committees to provide these is embodied in Standing Orders. While most Committee staff have been co-operative over this, such advance issue is at their discretion and Departments cannot insist on seeing copies. If a Report is known to be imminent, it may help Departments if their liaison officer can contact the Clerk to the Committee on an informal basis about the likely timetable, so that Departments can have as much notice as possible.

Immediate Comment

52. This period of notice enables Departments to prepare Press briefing as appropriate for comment on the Report as soon as it is published. These immediate comments are, however, subject to certain rules and conventions because it is vital that they should not appear to anticipate or prejudice the Government's final and considered reply to the Committee's recommendations (see paragraphs 59-60 below), which must first be given to Parliament.

Reference to Parliamentary privilege in para 49 of GEN 76/78 omitted.

53. When they are aware of the prospective publication of a Select Committee Report with which they are concerned, the Department should consider what, if any, form of Press briefing is desirable, eg whether to issue an immediate Press Notice at the same time as the publication of the Report or simply to provide material to the departmental Press Office against the possibility of Press enquiries. It should be borne in mind that the Press are entitled to get advance copies at the same time as the Department (cf paragraph 51 above), so that questions may arise almost as soon as the copies are available.

54. It is a point of overriding importance that the Government's final and considered reply to the specific recommendations of a Select Committee should be delivered first to Parliament. This means that nothing in the comments given to the Press (immediately on publication of the Report or in the intervening period up to the delivery of the Government's reply) should seem to anticipate that reply. On the other hand, there is no objection to the provision of relevant background information or to the correction of mis-statements of fact; and, if desired, it may be possible to answer specific criticisms or comments by reference to other paragraphs in the Report or to

evidence given to the Committee and published with the Report. Committees frequently publish with their Reports the evidence they have taken; in such cases the evidence may be quoted without risking a breach of Parliamentary privilege. Questions from the Press about a Committee's recommendations should be answered by saying that they will be fully considered and answered as soon as possible by an official reply.

55. Where a Select Committee Report concerns more than one Department, the Department with the major interest should co-ordinate the Press briefing, though Press enquiries may be answered by the other Departments concerned on the agreed lines.

56. In respect of "omnibus" Reports from the Public Accounts Committee, it is for Departments to prepare their own Press Notices, if any, and information to be given to the Press. There is, however, a specific undertaking given to the Committee by the Treasury in December 1968 that information provided by Departments to the Press will be confined to background and supplementary information of a character not intended to be "controversial comments", will not contain argument about the Committee's recommendations, and will be "vetted" by the Treasury. As far as possible a record should be kept of these departmental statements so that disputes about their form and content may be avoided. The arrangements in this paragraph apply to immediate comment on Reports of the Comptroller and Auditor General.

Timing and Manner of Formal Reply

57. Select Committees have often been critical of the time taken by Departments to reply to their reports, and the Procedure Committee have recommended that Departments should normally be required to publish their observations on Select Committee Reports within 2 months of publication of the Reports. The Committee proposed that, in the event of insuperable difficulties which make this impracticable, an interim set of observations should be produced within 2 months, and within every 2 month period thereafter.

58. Previous Government statements have drawn attention to the practical difficulties there would be in giving a firm undertaking to reply in all such cases within this timescale. It has been pointed out that Committee Reports tend to cover issues which require consideration in some depth, and consultations within and outside Departments are frequently necessary before a substantive reply can be provided. Departments should however do their **best to** meet the 2-month timetable recommended by the Procedure Committee. Where this is not possible, the reply should certainly be provided within 6 months and letters should go to the Committee before the expiry of the 2-month period explaining why the earlier deadline cannot be met.

Historical material in paras 54-55 of GEN 76/78 omitted; also para 56.

59. The Government's considered reply to the specific recommendations of a Committee is frequently presented as a Command Paper. Departments are reminded that the Secretary of the Cabinet should be given notice of impending Command Papers at least one month before the final proof of the publication is required, in order that adequate arrangements can be made for the appropriate Ministerial Committee and (if necessary) the Cabinet to clear the draft. Even if the draft of a Command Paper has been considered by a Ministerial Committee, it is customary to circulate the draft to the Cabinet for information at the draft or CFR stage. Where several Departments are concerned, the Command Paper may be issued either by the principal Minister concerned, or by several

Ministers acting jointly, each Department contributing a separate section of the paper. Replies to Reports of the Public Accounts Committee are always collated and presented by the Treasury. Where a Select Committee's recommendations concern another public body, that body may reply direct to the Committee, or its reply may be annexed to the Government's. Advance copies of any Command Paper in reply to a Select Committee Report should be made available to the Committee concerned (and to the Press) 48 hours before publication, and Committees may find it helpful to be advised informally, where possible, that a reply is imminent. This is the counterpart of the arrangement described in paragraph 51 above.

60. Departments are not, however, obliged to use the Command Paper form of reply to a Select Committee, particularly for minor recommendations. Departments may address Committees in the form of memoranda, or a Minister may wish to address the Chairman of a Committee by letter if the subject does not appear to merit a more formal treatment, or answers to Parliamentary Question may be used. In the first 2 cases, however, the reply becomes evidence submitted to the Committee, which the Committee may publish if it so decides and, if desired, with its own further comments on the Government's reply. Replies to reports by Committees which have not been re-appointed can take the form of Command Papers, Ministerial statements, or answers to Parliamentary Questions, etc. There is no obligation to reply to every point made by a Committee: some may be obiter dicta: some may not be addressed to the Government but to the House (eg certain recommendations of the Procedure Committee): some may be conveniently covered in one omnibus comment. In the period between a Committee's report and the formal Government reply, there need be no constraint on Departments taking action on any recommendation made by the Committee. However when such action is taken the Committee should be informed, a Parliamentary announcement should be considered, and in any event the formal Government reply to the Committee should refer to the action taken (see also paragraph 14).

[* Note on paragraph 5: the text of the Standing Order is not yet available. Appendix A temporarily consists of the Resolution as debated on 25 June; this does not cover the Scottish and Welsh Committees, and there have been a few other amendments. It should be possible to include the Standing Order in the new Memorandum when it is issued; if by any chance this should not be possible it will include the Resolutions (including those covering the Scottish and Welsh Committees) in their amended form.]

SELECT COMMITTEES RELATED TO GOVERNMENT DEPARTMENTS

Mr Norman St John-Stevas

That -

(1) Select committees shall be appointed to examine the expenditure, administration and policy of the principal government departments set out in paragraph (2) of this Order and associated public bodies, and similar matters within the responsibilities of the Secretaries of State for Scotland and Northern Ireland.

(2) The committees appointed under paragraph 1 of this Order, the principal departments of Government with which they are concerned, the maximum numbers of each committee and the quorum in each case shall be as follows:

| Name of Committee | Principal government departments concerned | Maximum numbers of Members | Quorum |
|--------------------------------|---|----------------------------|--------|
| 1. Agriculture | Ministry of Agriculture, Fisheries and Food | 9 | 3 |
| 2. Defence | Ministry of Defence | 10 | 3 |
| 3. Education, Science and Arts | Department of Education and Science | 9 | 3 |
| 4. Employment | Department of Employment | 9 | 3 |
| 5. Energy | Department of Energy | 10 | 3 |
| 6. Environment | Department of the Environment | 10 | 3 |
| 7. Foreign Affairs | Foreign and Commonwealth Office | 11 | 3 |
| 8. Home Affairs | Home Office | 11 | 3 |
| 9. Industry and Trade | Department of Industry, Department of Trade | 11 | 3 |
| 10. Social Services | Department of Health and Social Security | 9 | 3 |
| 11. Transport | Department of Transport | 10 | 3 |
| 12. Treasury and Civil Service | Treasury, Civil Service Department, Board of Inland Revenue, Board of Customs and Excise. | 11 | 3 |

(3) There shall in addition be a select committee to examine the reports of the Parliamentary Commissioner for Administration and of the Health Services Commissioners for England, Scotland and Wales which are laid before this House, and matters in connection therewith; and the committee shall consist of eight Members, of whom the quorum shall be three.

(4) The Foreign Affairs Committee, the Home Affairs Committee and the Treasury and Civil Service Committee shall each have the power to appoint one sub-committee.

(5) There may be a sub-committee, drawn from the membership of two or more of the Energy, Environment, Industry and Trade, Transport and Treasury and Civil Service Committees, set up from time to time to consider any matter affecting two or more nationalised industries.

(6) Select committees appointed under this Order shall have power -

- (a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;
- (b) to appoint persons with technical knowledge either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference; and
- (c) to report from time to time the minutes of evidence taken before sub-committees; and the sub-committees appointed under this Order shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, and to adjourn from place to place, and shall have a quorum of three.

(7) Unless the House otherwise orders, all Members nominated to a committee appointed under this Order shall continue to be members of that committee for the remainder of the Parliament.

That this Order be a Standing Order of the House.

EXTRACT FROM HANSARD OF 24 MAY 1979

CABINET COMMITTEES

Q7. Mr Mike Thomas asked the Prime Minister is she will now answer questions on the membership and terms of reference of cabinet committees.

The Prime Minister: I have established four standing committees of the Cabinet: a defence and oversea policy committee and an economic strategy committee, both under my chairmanship; a home and social affairs committee under the chairmanship of my right hon. Friend the Home Secretary; and a legislation committee under the chairmanship of the Lord Chancellor. Attendance at these committees will vary according to the subject under discussion. Where appropriate, sub-committees of the standing committees will be established. Membership, and terms of reference of the standing committees or their sub-committees will remain confidential.



Sir Douglas Allen GCB
Head of the Home Civil Service

APPENDIX C
(paragraphs 43 et seq)

Civil Service Department
Whitehall London SW1A 2AZ
Telephone 01-839 7733 ext 1528

19 August 1975

DISCLOSURE OF CLASSIFIED INFORMATION TO SELECT COMMITTEES

Discussions have taken place with the Chairman of the Liaison Committee of Select Committee Chairmen with the object of formalising the working conventions governing the conditions under which classified information is disclosed to Parliamentary Select Committees. Agreement has now been reached on the following rules.

- i. a. Subject to the continuance of the special arrangements for the Expenditure Committee referred to in b. below, any information classified SECRET or TOP SECRET which is disclosed should be restricted to those persons to whom the department has agreed to release it: in practice this would mean only the members of the Select Committee or of the Sub-Committee concerned and, in the case of a Sub-Committee, the Chairman of the main Committee (since, eg the Chairman of the Expenditure Committee is ex-officio a member of all the Sub-Committees). Information classified CONFIDENTIAL or RESTRICTED should be similarly restricted, except that when it has been disclosed to members of Sub-Committees it may also be made available to the main Committee concerned.
- b. Any classified information, whatever its classification, disclosed to the Expenditure Committee's Sub-Committee on Defence and External Affairs should be made available only to the members of the Sub-Committee and the Chairman of the main Committee.
- c. Notwithstanding the restrictions imposed in sub-paragraphs a. and b. above, classified information may be disclosed to Specialist Advisers who have been security cleared in accordance with arrangements agreed with the Clerk of the House.
- d. The release of TOP SECRET information under these arrangements to members of Select Committee is subject to the approval of the responsible Minister in each case.

ii. Classified memoranda or classified annexes to memoranda should be made available to members only during Committee or Sub-Committee meetings and on request in the Committee Office. Members should not be free to take classified documents away with them.

iii. Classified portions or oral evidence should be sidelined by the witness in the shorthand writer's transcript and then excised by the Committee before the evidence is printed in proof form and distributed to Committee members, the full record being retained in the Committee Office for perusal there by members authorised to have access to it in accordance with paragraph i above.

2. Current guidance on this subject in Chapter 17, paragraphs 22-25* of the Manual "Security in Government Departments" will be revised accordingly. Further guidance for Officials giving evidence to Parliamentary Select Committees was contained in a memorandum issued under cover of a CSD DEO letter dated 13 September 1972. Paragraph 9 reminds Departments that some Select Committees admit the public and press to hearings, and paragraph 24 advises on the action to be taken if an Official is asked a question in open session which he cannot answer on security or similar grounds.

3. Some Departments are already applying these rules under informal understandings with the relevant Select Committees. If your Department is not already applying the rules on an informal basis I should be grateful if you would put them into effect forthwith.

4. I am copying this letter to the Heads of Department on the attached list.

Yours sincerely,

Douglas Allen

* Now Appendix M. The remainder of this paragraph has been superseded.

Note : References in this letter to the Expenditure Committee and its Sub-Committees should now be read as referring to the Select Committees related to Government Departments (paragraph 4 of this Memorandum). The special arrangements at paragraph 1(i)(b) of the letter are no longer applicable.

7 DEC 1979





Particular
NBPM
MS

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Norman St John Stevas MP
Chancellor of the Duchy of Lancaster
Privy Council Office
Whitehall
LONDON

19 December 1979

DEPARTMENTAL SELECT COMMITTEES

I have seen Michael Heseltine's letter of ~~12~~ December to you about concurrent examination by Select Committees and Standing Committees of matters which are the subject of current legislation.

The Select Committee on Scottish Affairs is, as you know, one of those where the Opposition provides the Chairman and they are providing me - and Michael Heseltine by extension - with a possible source of embarrassment since they are proposing to examine officials of the Scottish Office on Wednesday morning 19 December on rate support grant with particular reference to the economic assumptions underlying the RSG settlement. Since the RSG Orders will not now be debated before January, there will be the distinct possibility of the Select Committee on Scottish Affairs probing officials on points which they want to use against Ministers when the RSG Orders come to be debated.

Although the Select Committee have said that they want to take this evidence as a means of educating themselves, it seems inevitable that they will not confine themselves to general aspects of rate support grant but will probe - as indeed we have some indication they intend to - such matters as the assessment of wage costs, rates of inflation and levels of staffing and services which underlie the RSG Order recently made.

I share Michael Heseltine's view that there can be no question of attempting to get the Select Committees to abandon their proposed areas of investigation but this is an aspect of the creation of Select Committees which, now that they have been set up, seems likely to continue to provide us with some embarrassment particularly in the context of concurrent legislation.

I am sending copies of this letter to the Prime Minister, Cabinet colleagues, the Minister of Transport, the Chief Whip and Sir Robert Armstrong.

19 DEC 1979





PARLIAMENT
U
MS

Caxton House Tothill Street London SW1H 9NA
6400

Telephone Direct Line 01-213.....

Switchboard 01-213 3000

Rt Hon Norman St John Stevas MP
Chancellor of the Duchy of Lancaster
Privy Council Office
68 Whitehall Place
LONDON SW1

18 December 1979

John Stevas

DEPARTMENTAL SELECT COMMITTEES

Could I support Michael Heseltine's suggestion that we should have an early discussion about the problem of Select Committees considering matters which are simultaneously being dealt with in the Standing Committee on a Bill.

In my case this problem arises because the Select Committee on Employment wants to consider the question of legal immunities of trade unions and has asked for a paper by 21 January and a hearing on 30 January. This matter is not at present directly dealt with in the Bill, though it is involved in the provision on picketing, but there is every possibility that we shall be bringing forward an amendment on the subject during the passage of the Bill.

Yes
T

FILE



Parliament VLS
cc COLO
CWO
DOE

10 DOWNING STREET

From the Private Secretary

MR. VILE

CABINET OFFICE

Departmental Select Committees

The Prime Minister has seen the Secretary of State for the Environment's letter of 12 December to the Chancellor of the Duchy of Lancaster. She thinks that this matter ought to be discussed in Cabinet. May I leave it to you to make the necessary arrangements?

I am copying this minute to John Stevens (Chancellor of the Duchy of Lancaster's Office) and Murdo Maclean (Chief Whip's Office). A copy also goes to David Edmonds (D.O.E.).

N. J. SANDERS

A large, stylized handwritten signature in blue ink, likely belonging to N. J. Sanders.

14 December 1979



MAP 010

2.

PRIME MINISTER

2 MARSHAM STREET
LONDON SW1P 3EB

Mr Heseltine is concerned about the operation of the new Select Committees.

He wants the government to reach an understanding on the timing of their enquiries in relation to legislation before the House. This could come to Cabinet - or perhaps "L".

My ref:

Your ref:

12 DEC 79

Cabinet - this we all know! Mr

DEPARTMENTAL SELECT COMMITTEES

We now have an indication of the subjects that the Environment Select Committee are going to investigate; I understand that they are going to look at the future of the rented housing sector and will at an early stage take evidence on the financial and social implications of the sale of council houses. I am concerned at the political and parliamentary procedural difficulties that seem likely to arise from select committees' investigations into topics that are the subject of current legislation.

In the standing committee, political arguments and the government majority are available as weapons in dealing with difficult opposition proposals. In a Select Committee neither is available to a civil servant witness and if the Chairman (in our case from the Opposition) asks a civil servant questions then he is obliged to answer constructively, subject only to the question not being an improper matter for a civil servant to answer on - in practice this leaves a very wide field for effective investigation. A civil servant might be asked by the Select Committee to give the background to, or the facts relevant to, statements made by a Minister the previous day in the standing committee; Ministers could be faced (at short notice) with arguments based on material extracted the previous day from civil servants. There will inevitably be a considerable risk of embarrassment from what civil servants might be pressed to say. And civil servants could well be faced with a severe conflict of loyalty in answering questions in the Select Committee on matters that were simultaneously being argued by their Ministers before a standing committee.

As I see it, the difficulty derives almost entirely from timing. I see no difficulty for civil servants or Ministers in investigations by a Select Committee of matters that may well become the subject of legislation in the following session, or even a few months later in the same session. On that basis there are topics that could well be discussed in a Select Committee over the next few months and which could be helpful to the House in preparation for next year's legislation. But I think simultaneous Select Committees and standing committee investigations in the same subject area could be a recipe for disaster, doing serious harm to the relations between Ministers and their departments and the select committees.

This problem is potentially most acute with an Opposition Chairman to the Select Committee. I understand that the Committees with Opposition Chairman shadowing Departments with major Bills this session are Employment, Education and, possibly, Transport but the difficulties could still arise with the Department of Industry whose committee has a government party chairman.

My Permanent Secretary has been invited to an informal meeting with the Environment Committee on 13 December. Concurrent proceedings in standing and select committees on the same topic will also cause workload problems for the Department and this aspect he can readily put to the Committee. But the other arguments could, obviously, not easily be developed to the Committee by officials. It seems to me that these need to be carried forward on a political level, and that we perhaps need a common policy applying across all the Departmental Select Committees. You may think that the best way ahead would be an early discussion with colleagues.

In the particular case of the Environment Committee, I do not think that there can be any question of attempting to get them to abandon their present proposed areas of investigation. But it could help a great deal if they were prepared to adjust the timing of their programme so that they were not operating on any particular subject simultaneously with Commons standing committee consideration of a Bill on the same subject.

I am sending copies of this letter to the Prime Minister, Cabinet colleagues, the Minister of Transport, the Chief Whip and Sir Robert Armstrong.

Yes
MHE

MICHAEL HESELTINE

7 6 5 4 3 2 1
8 9 10 11 12

13 DEC 1970



Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

26 October 1979

De Grady!

✓
MS

Thank you very much for your letter of 18 October.

Perhaps I could say at once that I am most grateful for your agreement that we should table the motion to establish the Select Committee on the Scottish Office. As you know, our officials have been in touch about the details and we were able to put the motion down last night. I am also grateful for the draft letters which you let me have to send to the representatives of the other Parties on the all-party talks, which I have now written and of which you will now have copies.

Turning to next week's debate, I shall certainly discourage any suggestion that we should go into questions affecting Scottish business. I might deal factually with one or two specific questions if they are put to me and if it seems appropriate to do so, but otherwise I will certainly want the debate to concentrate on the motions which I have now tabled.

On your other points, I shall advise the House to accept the Procedure Committee's proposals on Friday sittings, although there will be practical implications for the staff and services which we shall have to settle before the change takes place. I am, as you know, sympathetic to the idea of an earlier start to the long recess, and I should like to work towards that, although there will be problems from the point of view of the timetable for the Finance Bill and this year, as we all know too well, from the general pressure of the legislative programme.

You will have seen my letter to the Home Secretary of 19 October about the recommendation on referring private Members' bills to a second reading committee; and I should mention that on reflection I think the arrangements for Consolidated Fund Bills need further examination before I bring any

Cont...



proposals of our own before the House. I will keep closely in touch.

I am sending copies of this letter to the Prime Minister and other colleagues in the Cabinet, to the Minister of Transport, the Attorney General, the Chief Whip and to Sir John Hunt.

James
R

The Rt Hon George Younger, MP
Secretary of State for Scotland
Scottish Office
Dover House
Whitehall
SW1

29 OCT 1979





Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

26 October 1979

Parliament

✓
M

Dear Mr. Hall

HOUSE OF COMMONS PROCEDURE

Thank you for your letter of 23 October and for your comments on the proposals in the Chancellor of the Duchy's minute to the Prime Minister of 5 October.

On the reference of private Members' bills to a Second Reading committee, it will certainly remain possible for bills to have their Second Readings on the Floor if the Member so wishes, and we would expect this practice to continue for the great majority of bills. You will have seen the correspondence between the Home Secretary and the Chancellor of the Duchy on this recommendation, and the safeguards which the Chancellor of the Duchy now proposes to protect the balloted bills and to prevent abuse. I hope these will relieve any anxieties which you may have.

The Chancellor of the Duchy has also given further thought to the arrangements for Consolidated Fund Bills and has decided that these will need to be examined in more detail before he brings any specific proposals before the House. We shall be working on this with the Clerks and the Chief Whip's Office and will keep you in touch.

The Chancellor of the Duchy does not have it in mind at present to propose an early debate on the procedures for EEC matters, and he hopes it can be resisted, at least until well into the New Year. Again, we will keep you in touch.

I am copying this letter to the Private Secretaries of other Members of the Cabinet and of the Minister of Transport, the Attorney General and the Chief Whip, and also to Martin Vile.

J W Stevens
J W Stevens
J W STEVENS
Private Secretary

M A Hall Esq
Private Secretary to the
Chancellor of the Exchequer

26 OCT 1979





Rob James
✓
M

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

23rd October 1979

Dear Petra,

HOUSE OF COMMONS PROCEDURE

Your Minister sent a copy of his minute to the Prime Minister of 5th October to the Chancellor of the Exchequer.

We are content with your Minister's procedural proposals. But we do have a few comments on his suggested response to the Procedure Committee's individual recommendations:-

(i) First report, recommendation 3

We assume that Government-inspired Private Members' Bills will be free to pursue their passage on the Floor of the House if so desired. If not, they could be delayed waiting for the Second Reading Committee to become free. Even assuming this, we are a little uneasy about these arrangements. The danger is that consideration in Second Reading Committee of Bills which the Government later intends to block will lead to a waste not just of Members', but also of Ministers' and officials' time.

(ii) First report, recommendation 73

There are potential drawbacks to this new procedure, as it could in certain circumstances result in considerable delay in processing Consolidated Fund Bills. It could also result in a greater expenditure of Ministers' time in Committee than is currently the case with Second Reading on the Floor. But we have no objection, provided (a) arrangements can be made for the rule about notice for the referral motions for Second Reading Committees of Consolidated Fund Bills to be waived; (b) it is possible to devise an arrangement whereby the Committee does not have to be selected on each occasion following the

Miss Petra Laidlaw

/referral



referral motion; and (c) the date for the remaining stages of the Bill can be announced in Business Statements in anticipation of the House's decision on earlier stages.

- (iii) First report, recommendations 75 and 76
We agree with the line the Chancellor of the Duchy proposes to take. It would not be in the interest of the Government to change its present procedures: it is important to maintain the maximum possible degree of flexibility.

This applies particularly to the timetable for the Finance Bill, which would be affected by recommendation 75. Under the Provisional Collection of Taxes Act, the Finance Bill has to receive Royal Assent by 5th August, and this means that it needs to be passed by both Houses of Parliament before the summer recess. This necessarily imposes something of a constraint on the Parliamentary timetable. In recent years, the House of Commons has not passed the Finance Bill until the third or even the last week in July. Since it would be difficult either to bring the Finance Bill timetable forward or to shorten the length of time which Parliament gives to the Finance Bill, it is not easy to see how the House could rise very much earlier than it does at present. Indeed, if some of the Procedure Committee's recommendations on Public Procedure were accepted, the Finance Bill timetable would be extended, which could well put back the time when the House rose for the summer recess.

I note incidentally that the Procedure Committee are pressing for an early debate on the procedures for considering EEC matters. The Chancellor and the Chief Secretary will of course be interested to know how the Leader of the House intends to respond.

I am copying this letter to the Private Secretaries to the other members of Cabinet, to the Private Secretaries of the Minister of Transport and the Attorney General, and to Sir John Hunt.

You are,
M.A. Hall
(M.A. HALL)



24 OCT 1979

OW



Parliament

2 MARSHAM STREET
LONDON SW1P 3EB

My ref: H/PS0/15905/79

Your ref:

22 OCT 1979

Dear Sir

HOUSE OF COMMONS PROCEDURE

Thank you for sending me a copy of your minute of 5 October to the Prime Minister.

I am content that we should go ahead on the lines you suggest.

I am copying this to the recipients of your letter.

yes

MICHAEL HESELTINE

The Rt Hon Norman St John Stevas MP

251

11 12 1
100 2 3
4 5 6 7 8 9





WITH
THE COMPLIMENTS OF THE
PRIVATE SECRETARY

MINISTRY OF DEFENCE, WHITEHALL

LONDON, S.W.1A 2HB



Parliament
✓ MS

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 2111/3

D/S of S 2/6II

CHANCELLOR OF THE DUCHY OF LANCASTER

HOUSE OF COMMONS PROCEDURE

Thank you for sending me a copy of your minute of 5th October to the Prime Minister. I am content with the general approach which you have outlined and with the line which you propose on the various recommendations which would be debated.

2. I am copying this minute to other members of the Cabinet, to the Minister of Transport, the Attorney General and the Secretary of the Cabinet.

19th October 1979



22 OCT 1973



Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

VMS

19 October 1979

Dear Secretary of State

HOUSE OF COMMONS PROCEDURE

Thank you for your letter of 16 October.

I do very much appreciate your concern about the Procedure Committee's recommendation 3 on the reference of Private Members' Bills to second reading committees. I have given a good deal of thought to this in the light of your letter and of advice from the Chief Whip, and I wonder if there is scope for a solution which would meet the three points you have made without putting the Government in the position of having to resist the recommendation outright. What I have in mind is that a private Member sponsoring a bill would be able to move the reference of his bill to a second reading committee, but only after the seventh Private Members' Day (so protecting the bills of Members who were highly placed in the ballot) and only if the reference were unopposed. This second proviso would enable the Whips to object to the reference in the same way as they can object to a formal Second Reading and would be an equivalent indication of the Government's position. The weakness of this scheme is, of course, that it might result in very few private Members' bills being referred to second reading committees, but for just that reason we could resist pressure to appoint a second Standing Committee, and it would certainly be my intention to do so.

For obvious reasons I would rather offer the House a compromise along these lines than oppose the recommendation altogether, but I would, of course, only want to do that if you are yourself satisfied that it gives us adequate control. I would, of course, make our position quite clear in my speech, and I would present the proposal as an experiment which we might run for this session and which we would then review before advising the House to let it continue.

On Friday sittings, I agree that it would be virtually impossible to answer private notice questions at 9.30 a.m. if notice were only given that morning and we must find



some alternative - either they must be answered later in the day or notice must be given by, say, 6.00 p.m. the previous evening.

I am copying this letter to the Prime Minister, other members of the Cabinet, the Attorney General, the Minister of Transport, the Chief Whip and Sir John Hunt.

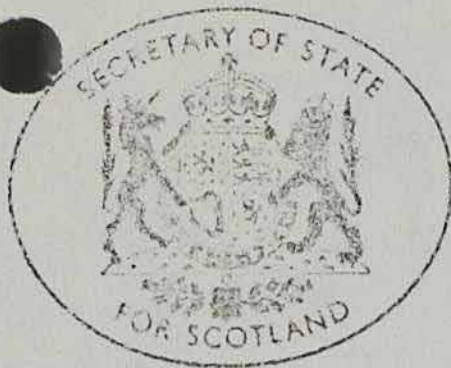
Yours sincerely
V. Stevens

PRIVATE SECRETARY
(Dictated by the Minister and
signed in his absence)

The Rt Hon William Whitelaw, CH, MC, MP
Secretary of State
Home Department
Queen Anne's Gate
London
SW1

19 OCT 1979

10 11 12 1
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✓ M

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Norman St John-Stevas MP
Chancellor of the Duchy of Lancaster
Privy Council Office
Whitehall
LONDON
SW1

18 October 1979

CONFIDENTIAL

HOUSE OF COMMONS PROCEDURE

1. Thank you for letting me see a copy of your minute to the Prime Minister of 5 October. I have the following comments on the minute and on the proposed Government response to the Procedure Committee's recommendations listed in the Annex to your minute.

2. Select Committees

Although, as you say, we have made good progress with the arrangements for establishing the new structure of departmentally related Select Committees, we have still to bring the House a motion, shortly after the recess, for the establishment of a Select Committee for Scotland. I will be in touch with you shortly about the form of the motion.

3. General Approach

I am content with your proposals for a debate on a selection of the outstanding recommendations of the Procedure Committee. Depending on the outcome of our proposals for all party talks on the Government of Scotland, we may shortly find ourselves having to promote consideration in the House of procedural changes relating to Scottish business. But we should try to prevent the debate you are presently suggesting from straying into that area, taking it as a separate issue.

4. Annex (74) Friday sittings

I am sure the proposals for an earlier conclusion of Friday sittings will be welcomed by the Scottish members.

5. (75) Annual pattern of sittings

I fully appreciate that the need to make time for all the business we wish to transact in a session has always prevented any move to rise earlier for the summer recess. Can we not hold out a promise of action here? It is well known that Scottish members, many of whom have school age children, are particularly disadvantaged if the House does not rise until late July or early August, since by then the school holidays for many are nearly over. This inconvenience is reinforced by the fact that neither Easter nor Whitsun is a universal public holiday in Scotland and, when Easter falls late, the school holidays and House vacation can fail to coincide at all. Even if next year we have to sit well into July, or later, I should like to think we could aim, in principle, to rise earlier. I was one of those on the Select Committee who was very much in favour of the change, and these views are now reinforced by the attention which we are currently focussing on ways of making Parliamentary procedure better adapted to Scottish needs.

6. Third Report

I fully support the response suggested to the recommendation about access to the Table Office. It could make for awkward and unnecessary practical differences if secretaries were unable to approach the Table Office.

7. I am sending copies of this minute to the Prime Minister and other colleagues in the Cabinet, to the Minister of Transport, the Attorney General and to Sir John Hunt.

Approved by the Secretary of
State and signed in his
absence

J S WILSON
Private Secretary

11 OCT 1979





QUEEN ANNE'S GATE LONDON SW1H 9AT

16 October 1979

Parliament
✓MS

Dear Norman

HOUSE OF COMMONS PROCEDURE

Your minute to the Prime Minister of 5 October invited comments on your proposals for dealing with the follow-up to the Procedure Committee's report.

I have comments on only three of the recommendations:

1. RECOMMENDATION 3: REFERENCE OF PRIVATE MEMBERS' BILLS TO SECOND READING COMMITTEE

I am bound to say that I do not like this proposal, which in my view will create real difficulties. I should prefer that it be resisted. The Home Office would clearly be more affected than most Departments. For example this Session, which is not untypical, we have responsibility for some 16 Private Members' Bills (and some seven Private Peers' Bills that may also eventually find their way to the Commons). Specifically, the recommendations seem to ignore:

- (i) that there is a ballot for Private Members' Bills to determine the order of precedence. Under these recommendations less contentious Bills (however low down the ballot, or even S.O.13 Bills) can make progress at the expense of high placed contentious Bills;
- (ii) that Governments normally indicate their position in relation to any Bill at Second Reading. If the recommendation is adopted I would seriously question that control over Private Members' Bills was not weakened. It seems to me that the only way a contentious Bill could be prevented from being committed to a Second Reading Committee would be for the Government to block the motion for referral. If they did not do so would it not also be seen as giving tacit acceptance to the principles of the Bill? The system would, in my view, be abused if such a stance were not taken with the consequent additional workloads on Ministers and their Departments;

- (iii) that with more Bills obtaining Second Readings under the proposed procedures, pressure would build up for a Second Standing Committee on Private Members' Bills to be opened, which in turn would make Bills that much more difficult to stop.

2. RECOMMENDATION 71: 10 O'CLOCK SUSPENSION MOTION

I am glad to see that you propose to reject any backbench or Opposition amendment on this. Based on my own experience over a long passage of time I know it has caused a great deal of trouble for the Whips and will be equally inconvenient for Ministers who will no doubt be expected to provide the core of the 200.

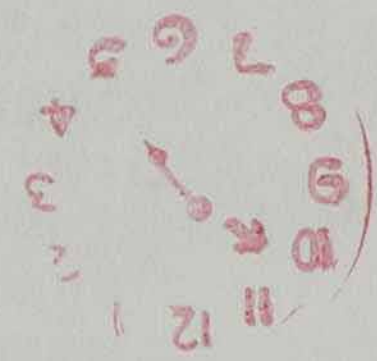
3. RECOMMENDATION 74: FRIDAY SITTINGS

I see no problem with accepting the recommendation as long as time can be found later during the course of the day for any PNQs that have been allowed to be answered; it would be virtually impossible for Departments to answer such Questions at 9.30 a.m.

I am copying this letter to the recipients of yours.

James
L. M. C.

—



17 OCT 1979

CONFIDENTIAL

✓ M.A.P. Parliament



ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

9 October 1979

CHANCELLOR OF THE DUCHY OF LANCASTER

HOUSE OF COMMONS PROCEDURE

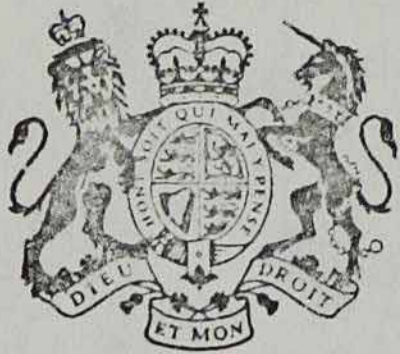
1. Thank you for sending me a copy of your minute to the Prime Minister of 5 October. I see no difficulty with the general approach which you recommend or with the particular line which you propose on the recommendations which would be debated.
2. I am copying this minute to the other members of the Cabinet, the Minister of Transport and Sir John Hunt.

M.H.
/



6/15/1979 100 1 11

CONFIDENTIAL



FIVE

DSC
P. H. MONTAGNA

10 DOWNING STREET

From the Private Secretary

9 October 1979

HOUSE OF COMMONS PROCEDURE

The Prime Minister has seen the Chancellor of the Duchy's minute to her of 5 October. Subject to the views of colleagues, she is content that he should proceed in the way proposed in that minute.

I am copying this letter to the Private Secretaries to the other members of Cabinet and to Genie Flanagan (Department of Transport), Bill Beckett (Law Officers' Department) and Martin Vile (Cabinet Office).

N. J. SANDERS

John Stevens, Esq.,
Chancellor of the Duchy of Lancaster's Office.

CONFIDENTIAL

DSC



CONFIDENTIAL

PRIME MINISTER

2

PRIME MINISTER

HOUSE OF COMMONS PROCEDURE

We must soon decide on the action we are to take on the next stage of the follow-up to the Procedure Committee's report (First Report from the Select Committee on Procedure, Session 1977-78).

To see. This should fill
M.T. an afternoon! I see no
reason to differ from the
CDL's proposals, and do not
expect many
comments from
colleagues.
MS

2. Following our discussion in Cabinet on 14 June (C(79)16 and CC(79)6th Conclusions, Minute 5) and the debate in the House of Commons on 25 June, negotiations have taken place through the usual channels to set up the new structure of departmentally-related Select Committees and these should be established soon after Parliament returns next month. Questions such as the party balance in the chairmanships of the Committees have been settled with the agreement of the departmental Ministers concerned and the few matters which remain outstanding - such as the composition and orders of reference of the Liaison Committee - should be resolved soon after the recess.

3. The recommendations on Select Committees were undoubtedly the most important in the report, and the prompt action we have taken has been widely welcomed. We are, however, committed to more than this. In the Manifesto we undertook to give the House of Commons an early chance of coming to a decision on all the proposals of the Procedure Committee, including the reports of the Sessional Committees. I therefore indicated in my speech on 25 June that the Select Committee debate was intended as the first instalment.

4. The Procedure Committee themselves have argued that we should take next the main recommendations on public bills and delegated legislation, and they have also claimed that a debate on the procedures for considering European Community matters - to include their own recommendations on European Economic Communities legislation - is long overdue. They will undoubtedly have some support in the House as a whole. These recommendations, if accepted in their entirety, could, however, create difficulties for the Government in a session which has such a heavy load of legislation. For example, a bill's Committee Stage would be lengthened and there would be a risk of having to provide more debates on statutory instruments. I shall want to consider the Committee's proposals for handling legislation, carefully with colleagues in due course. But I do not think we can take any risks in what we know will be a busy and contentious session, and I therefore propose to defer debate on them. When Parliament returns, however, I intend to consult the 1922 Committee and others such as the Constitutional Committee, the Procedure

CONFIDENTIAL

CONFIDENTIAL

Committee themselves and the Opposition spokesman (Mr Rees) about these particular proposals and to ask the Whips to take soundings from appropriate individuals. We shall then be in a position to judge more accurately the strength of feeling in the House as a whole, and I shall consult colleagues next year with a view to putting forward the Government's proposals towards the end of the session.

5. In the meantime we need to give the House a further chance to make progress in revising its procedures. We shall not be able to debate new Government bills until two weekends have elapsed after Parliament has returned, so we have a convenient opportunity for a debate during the week of 29 October to 2 November. I should like to use that opportunity for a debate covering the recommendations of the main Procedure Committee Report on the organisation of sessions and sittings (71-76) and on private Members' bills (1-3), together with the undebated reports of the Sessional Committees. The motion would be in terms which would allow debate on all these recommendations. There would be specific Government resolutions to allow the House to come to conclusions on most recommendations; in other cases where Opposition or back-bench amendments to the motion were put down, the Government generally would have to advise rejection. I attach an annex which describes in more detail what would be involved and the attitude I suggest we should take. I should draw your attention particularly to the Fifth Report for Session 1976-77 which deals with Questions to the Prime Minister: see page 6 of the annex. All divisions would be on a free vote. We must expect the debate to touch on some of the wider issues on which the Procedure Committee did not propose any change, such as Members' interests and the pattern of the Parliamentary day, but I see no serious difficulty in keeping control of the debate and of the resulting votes. I believe that such a debate would be welcome in Parliament and would result in some useful improvements.

this causes no difficulty

6. I should be grateful if you and colleagues to whom I am copying this minute would let me know if you see any difficulty with this general approach, and with the particular line I am proposing on the recommendations which would be debated.

7. I am copying this minute to other colleagues in the Cabinet, to the Minister of Transport and the Attorney General, and to Sir John Hunt.

NPSHS.

5 October 1979

N StJ S

FIRST REPORT OF THE SELECT COMMITTEE ON PROCEDURE, SESSION 1977-78
RECOMMENDATIONS (1)-(3) ON PRIVATE MEMBERS' BILLS

(1) Presentation of Bills under SO 13 ("10-Minute Rule" Bills)

A Member should not be permitted to seek leave to bring in a Bill under the provisions of SO No 13 unless he has first lodged a text of the proposed bill with the Public Bill Office (paragraph 2.7).

There is no Government objection to this recommendation, but the restriction on the recognised use of SO No 13 to raise matters at short notice may not be welcomed by all back-benchers. I propose no specific Government resolution; if there is an Opposition or back-bench amendment to accept this recommendation, we should leave it to the judgement of the House.

(2) Shorter Speeches

An experiment should be conducted, confined to second-reading debates, whereby, because of the number of Members wishing to take part, Mr Speaker would call Members between 7.00 pm and 9.00 pm to speak for a maximum of 10 minutes (paragraph 2.9).

No Government objection, and the recommendation is attractive in principle. I propose a Government resolution to give effect to it.

(3) Reference of Private Members' Bills to Second Reading Committee

Private Members should be free to propose, on Fridays allotted for Private Members' bills and motions, the reference of their bills to a second reading committee under the provisions of SO No 66 (paragraph 2.10).

The intention is to relieve pressure on the Floor of the House and, by allowing private Members' bills which have general support to overtake contentious bills in the queue for second reading, to give them a better chance of reaching the Statute Book. It would still be possible for bills which the Government cannot accept to be blocked at a later stage, so there is no threat to Government control (although there might be some risk of Members' time being wasted in Committee). I propose a Government resolution to give effect to this recommendation.

FIRST REPORT OF THE SELECT COMMITTEE ON PROCEDURE
RECOMMENDATIONS (71)-(76) ON THE ORGANISATION OF SESSIONS AND SITTINGS

(71) 10 o'clock Suspension Motions

If a division is called on a motion that specified business, though opposed, may be proceeded with after ten o'clock, the question on that motion should not be decided in the affirmative unless not less than 200 Members vote in the majority in support of the motion (paragraph 9.14).

This recommendation is designed to make 10 pm suspension motions less common and their passage more difficult. Although we shall avoid late sittings as far as possible, most sitting days with Government business attract a 10 pm suspension and the recommendation would mean that many more Government supporters would have to attend to secure the motion, at considerable inconvenience to themselves. I propose no Government resolution; if there is an Opposition or back-bench amendment, we should advise the House to reject it.

(72) Recess Adjournment Debates

The question on the motion proposing the dates of each recess, and on any amendments to the motion, should be put forthwith (paragraph 9.16).

This recommendation would remove one of the opportunities for back-benchers to raise matters of concern to them on the Floor, and some Members might oppose it on this account. There is, however, no Government objection to it, and it has some advantage. These debates have become somewhat artificial occasions, unlike the whole-day adjournment debate immediately before each recess, which would still be retained. I propose a Government motion to give effect to the recommendation.

(73) Consolidated Fund Bill Debates

The debate on the second reading of Consolidated Fund Bills should be taken in standing committee, in which all Members should be free to participate if they wish (paragraph 9.18).

Similar considerations apply as with (72), and I propose the same approach.

(74) Friday sittings

The House should sit on Fridays at 9.30 am, and business should be interrupted at 2.30 pm (paragraph 9.27).

There is considerable support for this recommendation, especially from Members representing constituencies at a distance from London. I propose a Government resolution to give effect to it.

(75) Annual pattern of recesses

There should be no fundamental change in the overall pattern of the session; the Easter recess should if possible be longer than the Whitsun recess; an earlier rising of Parliament for the summer recess is desirable and should be sought; a longer "spill-over" period in the autumn should be accommodated by bringing forward the dates of party conferences (paragraph 9.30).

Most of this is desirable in principle, but we must not lose our room for manoeuvre and we shall be under some pressure next year. I propose no Government resolution, but we could promise to take note and indicate general sympathy in the debate. An Opposition or back-bench amendment would, however, be opposed.

(76) Announcement of Recess dates

The dates of the Christmas, Easter and Whitsun Recesses should be announced, and approved by the House, soon after the beginning of each session (paragraph 9.31).

We must keep our present flexibility. Dates fixed in advance would cause difficulty if unforeseen business arose and could always be exploited by the Opposition. In practice Governments would probably have to play safe by announcing very short recesses. I propose no Government resolution; any Opposition or back-bench amendment should be opposed; but we could say in debate that the Government will always try to give as much notice as possible.

UNDEBATED REPORTS OF SESSIONAL COMMITTEE ON PROCEDURE
SESSION 1975-76

FIRST REPORT

Procedure for establishing the order of oral Questions

Random ordering of notices to be carried out in Upper Table Office at 4.05 pm. Marshalled questions to be number-stamped before being sent to Editorial Supervisor.

No action required. The Speaker has given instructions to enable the proposal to be pursued as an experiment.

SECOND REPORT

Order of precedence of Private Members' Bills

No change in present practice under which Second Readings take precedence over adjourned proceedings on the seventh and subsequent private Members' days.

No problem for the Government. Government resolution to approve the recommendation.

THIRD REPORT

Tabling of Questions and access to the Table Office

Access to the Table Office should be confined to Members, and Members should be able to discuss and table only those Questions that are in their own name.

There is no evidence of serious difficulty for Members or the Clerks in the present practice which allows secretaries to make enquiries at the Table Office on Members' behalf, and Members to authorise another Member to table a Question in their name without having signed it. The proposed change seems unnecessarily restrictive. No Government resolution, and if there is an Opposition or back-bench amendment, advise the House to reject this recommendation.

UNDEBATED REPORTS OF SESSIONAL COMMITTEE ON PROCEDURE
SESSION 1976-77

FIRST REPORT

Calling of amendments for division at end of debate

The experiment of calling an extra amendment at the end of the Debate on the Address should be regularised by Standing Order. But the practice should not be extended to other occasions.

No problem for the Government. Government resolution to approve the recommendation.

SECOND REPORT

Method of raising points of order during divisions

Existing requirement "to be seated and covered" to be retained, and second piece of headgear to be kept behind the chair.

As above. (Second hat now available).

THIRD REPORT

Voting on Opposition Motions on Supply Days

When the Question is put at the conclusion of the debate on a Supply Day when a Government amendment has been moved to an Opposition Motion it should be in the form: "The Question is that the original words stand part of the Question".

The present practice of dividing on the Government's amendment to a Supply Day Motion, and not on the original words, deprives the Opposition of voting on their own Motion, and is contrary to the spirit behind the current use of Supply Days. Government resolution to give effect to the recommendation.

FOURTH REPORT

Business of the House Motions to divide business at a stated time (usually 7 pm).

Present practice of occasional use should be allowed to continue, subject to extended consultation and Government assurances about limited use.

Government resolution to approve the recommendation with assurances in the debate if necessary.

FIFTH REPORT

Questions to the Prime Minister

The Prime Minister, at discretion, should retain more questions falling strictly within the responsibility of Departmental Ministers if important policy issues involved. Members should table fewer "device" type Questions to the Prime Minister. "Indirect" Questions should not be grouped with identical Questions, and Mr Speaker should enforce stricter rules of relevance on supplementaries arising from "indirect" questions.

Government resolution to take note of the report, and to invite the Speaker to take its recommendations into account. Statement of the Prime Minister's willingness to retain Questions when appropriate, as indicated by recent practice.

SIXTH REPORT

Operation of Standing Order No. 9

If a Member is able to give notice before noon of his intention to move the adjournment on a matter of urgent public importance he should not raise the matter on the Floor of the House without the Speaker's notification that he will grant the application. If urgency has become known after noon application should normally be made the following day. Applications on the Floor for an SO 9 debate should thus not be normally made without the prior agreement of the House.

No problem and some advantage to the Government. Government resolution to give effect to the recommendation.

SEVENTH REPORT

Eligibility of Members successful in ballots to take part in subsequent ballots.

No change in present practice which allows Members successful in a previous session to take part in ballots in subsequent sessions.

Government resolution to approve the recommendation.

EIGHTH REPORT

Tabling of amendments to a Bill on the day it receives a Second Reading.

Designation of single Clerk at the Table as recipient of all amendments.

Government resolution to approve the recommendation.

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Section 101 of the Act

The first part of the Act, section 101, deals with the general provisions of the Act. It states that the purpose of the Act is to provide for the regulation of the activities of the Commission and to provide for the regulation of the activities of the Commission and to provide for the regulation of the activities of the Commission.

Section 102 of the Act

Section 102 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

Section 103 of the Act

Section 103 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

Section 104 of the Act

Section 104 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

Section 105 of the Act

Section 105 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

Section 106 of the Act

Section 106 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

Section 107 of the Act

Section 107 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

Section 108 of the Act

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Section 109 of the Act

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Section 110 of the Act

Section 110 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

Section 111 of the Act

Section 111 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

Section 112 of the Act

Section 112 of the Act deals with the powers of the Commission. It states that the Commission has the power to do all such things as are necessary or expedient for the purposes of the Act.

PRIME MINISTER

*overtaken
MS*

Polhamed 2

Select Committee on Scottish Affairs

You wanted to be kept in touch with this before this afternoon's debate. The Chief Whip and the Chancellor of the Duchy discussed the Government line this morning. They decided that the Chancellor of the Duchy should say that the Government accepted in principle the case for a Select Committee on Scottish Affairs, but that the details ought to be on the agenda of the inter-party discussions on devolution. All the amendments designed to add a Select Committee will therefore be resisted.

MS

25 June 1979

PRIME MINISTER

- ① Accept in principle
- ② Details for all-party talks

To see.



SCOTTISH OFFICE
 WHITEHALL, LONDON SW1A 2AU

MJS

Perhaps (can
 see Mr. Fraser
 by Monday morning
 (as under-lying
 subject to other
 news.

22 June 1979

John Stevens Esq
 Private Secretary to the
 Chancellor of the Duchy of Lancaster
 Cabinet Office
 70 Whitehall
 LONDON SW1

Dear John,

DEBATE ON THE PROCEDURE COMMITTEE REPORT

My Secretary of State has been considering what to do in the light of Wednesday's debate on the Order to repeal the Scotland Act in the course of which it became clear that there is no longer any mileage to be gained in promoting the idea of a Select Committee on Scottish Affairs in the context of the all-Party talks. I understand that at the conclusion of the debate the Prime Minister suggested to Mr Younger that the Government might therefore include a Select Committee on Scottish Affairs among the Select Committees related to Government Departments in the Chancellor of the Duchy's Motion which is to be debated next Monday.

Mr Younger appreciates of course that it is now too late to include provision for such a Committee in the Motion itself but he believes that there would be considerable advantage if the Chancellor of the Duchy could indicate in opening the debate on Monday that the Government is prepared to accept the amendments put down by Mr Peter Fraser MP which would have the effect of adding a Select Committee on Scottish Affairs. (Mr Fraser's amendments are not entirely satisfactory in that they do not include a Scottish Committee in the list beginning at line 10 of the substantive Motion but they certainly achieve the desired result). Apart altogether from the advantages of this course following Wednesday's debate, it seems to Mr Younger very unlikely that Mr Fraser's amendments could be defeated on Monday or that he could be persuaded to withdraw them and in these circumstances it would be better to acknowledge at the beginning of Monday's debate that it is now desirable to proceed forthwith to set up a Select Committee on Scottish Affairs rather than have to concede it at the end of Monday's debate or in the vote.

If the Chancellor of the Duchy agrees, then the first nine lines of paragraph 7 of the draft speech circulated under cover of David Faulkner's letter of 21 June should be replaced by a passage such as the following:-

"As my rt hon Friend the Secretary of State for Scotland indicated in the debate on the Order to repeal the Scotland Act last Wednesday, the Government did not wish to pre-empt any of the possibilities which might have been raised in the forthcoming all-Party talks to establish common ground as to the scope and direction of improvement in the government of Scotland. It was on this basis therefore that the Motion before the House was drawn up. In the light of Wednesday's debate however the Government has decided that since it was so clearly the will of Members of all Parties that there should be a Select Committee on Scottish Affairs, we should proceed to set it up at the same time as the other Select Committees related to Government Departments and we are therefore prepared to accept the amendments to this Motion in the name of my hon Friend the Member for South Angus if they are called."

It would be helpful to have the Chancellor of the Duchy's and other Ministers' views as soon as possible.

I am copying this letter to Tim Lankester at No 10, to the Private Secretaries to other members of H Committee, to Murdo MacLean (Government Whip's Office) and to Martin Vile and David Faulkner in the Cabinet Office.

*Yours sincerely,
John Wilson*

J S WILSON
Private Secretary



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22 JUN 1979

Robert

PRIME MINISTER

In Cabinet last Thursday you said that you wanted a word with the Chief Whip, the Home Secretary, the Chairman and the Chancellor of the Duchy, about whipping for next Monday's debate on Procedure and Select Committees.

You are due to see the first three of these tomorrow at 1800 for other purposes. Although this meeting has had to be cut down to 30 minutes, shall we invite Mr. St. John-Stevas to come for a few minutes at the ^{end}~~beginning~~ so that you can talk about next Monday?

Yes sir.

ms

Arranged.

E.S.

19/6

18 June 1979

CONFIDENTIAL

Parliament

Ref. A09761

PRIME MINISTER

House of Commons Procedure

(C(79) 16)

BACKGROUND

You invited the Chancellor of the Duchy of Lancaster to submit a paper on the Procedure Committee's proposals for Select Committees in advance of the House of Commons debate now proposed for Monday 25th June. C(79) 16 deals with the principle of Departmental Committees (paragraphs 2 and 4, and paragraphs 1 to 7 of Annex A); the number of Departmental Committees and the abolition of the existing "Subject" Committees (paragraphs 5 and 6, and paragraphs 8 to 11 of Annex A); the powers of Select Committees (paragraph 7, and Annex B) and Parliamentary handling (paragraph 8).

2. On the question of principle, the arguments are clear enough: on the one hand, more effective scrutiny of the work of Government by Parliament for which there is support inside and outside the House; on the other hand, risks of more work for Ministers and officials, a possible weakening of collective responsibility and encouragement of Departmental separatism, and a possible undermining of Ministerial accountability to the House as a whole. The risks exist to some degree, however, with the present Committee structure - page 2 of Annex A.

Flag A 3. You will recall the Lord Chancellor's minute of 8th June stressing that Select Committees should be excluded from discussing the appointment and conduct of the Judiciary. This should not be difficult. His further proposal for leaving out smaller Departments such as his own and the Law Officers - which would come under the mantle of Home Affairs - would be more controversial.

4. On numbers, Annex A (paragraph 8) offers an alternative of 9 Committees through the grouping of Departments. Other groupings would be possible resulting in even fewer committees, but the objections remain as stated. The Chancellor of the Duchy proposes a reduction in the permitted number of sub-committees from 7 to 4 on grounds of economy. The Procedure Committee said that most committees should have no power to appoint sub-committees with investigative

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powers; but the Treasury, Foreign Affairs and Home Affairs Committees should be able to appoint two sub-committees each (which inter alia might cover the Civil Service Department, overseas development and race relations). The Chancellor of the Duchy visualises that these three Departmental Committees would each appoint one sub-committee; the fourth and joint Sub-Committee would cover nationalised industries. It would be open to the House to give permission for the appointment of specific additional sub-committees.

5. The Cabinet will presumably wish to support the abolition of the present Select Committees, although it will be resisted by some MPs: the Home Secretary sounds a warning about Race Relations and Immigration in his Private Secretary's letter of 7th June. In the February debate, the strongest pleading favoured the retention of the Select Committees on Nationalised Industries and the Parliamentary Commissioner for Administration.

6. The proposals on powers are twofold: that Select Committees should be able to order the attendance of Ministers, and the production of papers and records by Ministers; and that the Committee should be able to claim precedence over Government business for a debate in the House in the event of a refusal to produce papers. The serious risks in accepting the first proposal are set out in paragraphs 3 and 4 of Annex B. Assuming that the Cabinet decides to resist this proposal, there is the question how much should be said in the debate about the Government's willingness to disclose material to committees and what limitations there will be. The issue on the second proposal is very much a matter of tactics: the Government cannot accept an automatic right of debate - will it be easier to hold the line on a 'no change' basis, or by putting forward the alternative procedure described in paragraph 7 of the paper? A further variant would be to offer no change in the formal procedures of the House, but to give an undertaking to act in accordance with the alternative suggested.

HANDLING

7. You may wish to invite the Chancellor of the Duchy to introduce his paper. You could then take each of the main issues separately or you might run together the discussion on principle and numbers. You could begin by seeking the Home Secretary's views and then those of Ministers dealing with sensitive matters,

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the Lord Chancellor, the Secretary of State for Foreign and Commonwealth Affairs, the Chancellor of the Exchequer, and the Secretary of State for Defence. You will wish to establish whether there is agreement to setting up Departmental Committees on the basis proposed by the Procedure Committee (listed in paragraph 1 of Annex A); and whether there should be any necessary restrictions on their discussions (e.g. the Judiciary).

8. In the event of such agreement, the abolition generally of the present committee structure is unlikely to need discussion, but the Lord President, as Minister for the Civil Service, might be asked about the retention of the Select Committee on the Parliamentary Commissioner for Administration before seeking the collective view of the Cabinet.

9. Turning to powers, you might invite the Home Secretary to express a view, and possibly seek the views of the Chancellor of the Duchy and the Chief Whip on the likely response of backbenchers to the alternative courses put forward, before inviting general discussion.

10. On Parliamentary handling, there is likely to be general agreement that the Government should retain the initiative. You may want to discuss what steps should be taken to ensure a welcome for the Government's Motions, e.g. with the 1922 Committee, bearing in mind the Free Vote.

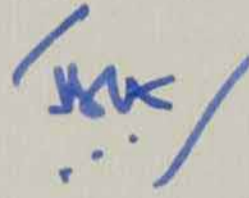
CONCLUSIONS

11. In the light of the discussion, you will wish to check that decisions have been taken on:-

- (a) the proposals for 12 departmentally related Committees subject to closer restrictions on the number of investigative sub-committees, and to any matters which should not be discussed.
- (b) The abolition of the existing structure of Select Committees, but the retention of the Select Committee on the PCA.
- (c) The powers of Select Committees.
- (d) Provision for an early debate on Motions to be tabled by the Government.

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You will also wish to invite the Chancellor of the Duchy to bring forward the further paper he suggests on the remaining recommendations of the Procedure Committee.



(John Hunt)

13th June, 1979

CONFIDENTIAL



10 DOWNING STREET

From the Private Secretary

11 June 1979

House of Commons Procedure

The Prime Minister has seen the Lord Chancellor's minute of 3 June about the possible impact of reforms in the Select Committee system on small Departments. She has much sympathy with this viewpoint, and takes it that the Lord Chancellor may wish to raise the question in Cabinet next Thursday.

I am copying this letter for information to John Stevens (Office of the Chancellor of the Duchy of Lancaster), John Chilcot (Home Office), Murdo Maclean (Chief Whip's Office) and Martin Vile (Cabinet Office).

N. J. SANDERS

Ian Maxwell, Esq.,
Lord Chancellor's Office.

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PRIME MINISTER

A 2



PRIME MINISTER

An interesting reflection of the real impact - on small

HOUSE OF LORDS,

SW1A 0PW

Departments and their Ministers in particular - of accepting the

Procedure Committee's recommendations on structure. The

Lord Chancellor will no doubt want to make the point

in Cabinet next Thursday. Content simply to note at

HOUSE OF COMMONS PROCEDURE

this stage? *Yes MS 8/vi*

(very much agree)

[attaché]

I have seen, and discussed with him, the minute which the Chancellor of the Duchy of Lancaster sent you on 24th May. I agree generally with what he says, and would only add the following points.

First, a point of special concern to me as Lord Chancellor is that the activities of Select Committees must not be allowed to threaten the independence of the Judiciary. This point is so important that I think it ought to be written into the Select Committees' terms of reference. I therefore recommend that, in addition to security and the safety of the State, the Committees' scope should expressly exclude them from discussing the appointment and conduct of the Judiciary, and confidential communications between them and the Lord Chancellor on judicial matters.

Apart from that major point of principle I foresee one or two practical problems for myself, as no doubt will other Ministers. A domestic consideration is that I have no junior Minister in the House of Commons, and I doubt if the Law Officers could fairly be expected to answer for me to a Select Committee of that House. But if such a Committee invited me to attend, I could only do so by special leave of the House of Lords. Some blanket permission may be needed. A more important problem for me is that it is not always easy to draw a clear line between the administration of the higher courts generally (for which I am properly responsible to Parliament as a Minister) and the administration of justice in particular cases (for which I am not responsible and from which Parliament must be excluded). Moreover, some judges and judicial officers, especially in the Supreme Court, retain certain administrative functions. The existence of this grey area is no reason in principle for excluding

the administration of the higher courts from inquiry by a Select Committee. But it may make it difficult to avoid involving the Judiciary.

More generally, I do not think that we should underestimate the additional burden which the new system will impose, both on Ministers and on officials at all, but especially senior, levels. If not a wholly new function of Government, it will be a great increase in an existing one; and will amount to a conscious decision to spend that much less of our and our officials' time on administering our Departments, and that much more on explaining and justifying ourselves in detail to Parliament. That is not necessarily wrong, but we must recognise that there is a price; and that the price is effectively increased by our policy of containing and reducing the size of the Civil Service. I am perhaps particularly conscious of this aspect because, although all will be affected, the impact in terms of increased work will fall most heavily on small Departments, like mine, which have not hitherto been regularly scrutinised by Select Committees.

These considerations made me wonder if it would not be possible, at least at the beginning of the new scheme, to leave out smaller Departments such as my own and the Law Officers'. This would be without prejudice to their eventual inclusion, which I accept cannot be resisted in principle, subject to the exclusions which I have recommended to preserve judicial independence.

I am copying this minute to the Chancellor of the Duchy of Lancaster, the Home Secretary, the Chief Whip and Sir John Hunt.

H: of S: M

8 June 1979

28 JUN 1979



Polanski

PRIME MINISTER

House of Commons Procedure

You asked the Chancellor of the Duchy to let you see in draft his Cabinet paper on the recommendations of the Select Committee on Procedure. That draft is attached at Flag A. I have also attached, at Flag B, a note of your meeting with Mr. Norman St. John-Stevas last Monday.

The draft paper discusses the options, as you asked that it should. It does not do so in the most economical way possible, and it does not pretend to be a neutral presentation of alternatives. But the Chancellor of the Duchy finds it difficult to put forward in any detail a middle way between the existing system and the recommendations of the Select Committee, for obvious reasons.

Are you content that he should circulate his paper in this form, and that it will give sufficient opportunity for discussion of the options in respect both of the structure of committees and their powers? Or do you want fundamental changes made to it before next Thursday's Cabinet?

MS

I have indicated the minimum changes in the paper.

7 June 1979

There must at least be an alternative of powers. Otherwise the paper gives no options - it is not merely a refusal to debate the alternative because it is easier to surrender.
MS

CONFIDENTIAL



10 DOWNING STREET

From the Private Secretary

8 June 1979

House of Commons Procedure: Cabinet Paper

The Prime Minister has seen the draft Cabinet Paper attached to your letter to me of 7 June. She has made a number of drafting suggestions, which I have already given to you. She has also added the more general comment that the changes she has suggested are to be regarded as the minimum. In her view, the paper should set out alternatives at least on powers. She is not content that the paper should give no options, since she regards that as being merely a refusal to debate the alternatives because it is easier to accept the Procedure Committee's recommendations in full.

I asked you earlier today to set in hand urgently the revision of the paper to meet the Prime Minister's wishes.

I am copying this letter to Martin Vile (Cabinet Office).

N. J. SANDERS

Miss C.M. Egerton,
Office of the Chancellor of the Duchy of Lancaster.

CONFIDENTIAL

A handwritten signature in blue ink, appearing to be 'AB' or similar initials.

COVERING CONFIDENTIAL



NICK SANDERS ESQ
10 DOWNING STREET

Dear Nick,

As requested in Mike Pattison's letter to John Stevens of 5 June, I am attaching a draft of the paper on House of Commons Procedure which the Chancellor of the Duchy proposes to circulate to Cabinet tomorrow.

It would be most helpful if you can let me know the Prime Minister's views in the course of the morning, so that the paper may be circulated in good time.

I am copying this to Martin Vile.

*Yours sincerely
Charlotte Egerton*

CHARLOTTE EGERTON
Assistant Private Secretary
7 June 1979

COVERING CONFIDENTIAL

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

C(79)

COPY NO:

CABINET

HOUSE OF COMMONS PROCEDURE

Memorandum by the Chancellor of the Duchy of Lancaster

1. We must decide our attitude to the changes in the procedure of the House of Commons which were proposed in the first report from the Select Committee on Procedure for Session 1977/78. In our election manifesto we ~~made a clear and unequivocal commitment about the Procedure Committee's proposals~~ ^{committed ourselves to give} namely that of giving the new House of Commons an early chance of coming to a decision on these proposals." We promised in The Queen's Speech that members of the House of Commons would be given an opportunity to discuss and amend their procedures, particularly as they relate to the scrutiny of the work of Government. Since then a Motion urging me to ensure that the House has an early opportunity to take decisions on the proposals of the Procedure Committee has attracted over 250 signatures; and a debate has been promised shortly after the Whitsun Recess. There can be no doubt of the determination of the House to have an opportunity to decide on the proposals of the Procedure Committee.

not a success

The Procedure Committee's Recommendations

2. The Report dealt with public bills, subordinate legislation, European legislation, Select Committees, financial control and the organisation of sessions and

/sittings.

sittings. These are all important matters but the immediate interest is in Select Committees and the proposals for:

(a) A new structure of 12 departmentally-related Select Committees, replacing the existing Expenditure Committee, the Select Committees on Nationalised Industries, Science and Technology, Overseas Development, Race Relations and Immigration, and the Select Committee on the Parliamentary Commissioner for Administration (PCA), together with their sub-committees, which in the case of the Expenditure Committee include sub-committees on Defence and External Affairs; Environment; Trade and Industry; Education, Arts and Home Office; and Social Services and Employment. Some Committees would have powers to set up investigative sub-committees, up to a total of 7 in all.

(b) Powers enabling the new Select Committees to "order" the attendance of Ministers to give evidence and to "order" the production of papers and records. In the event of a refusal the Committee would be empowered to claim precedence over public business for a debate in the House unless time were provided by the Government on the sixth sitting day after the first appearance of the Motion.

3. The details are set out in Annex A (on the structure of Select Committees) and Annex B (on their powers). In these Annexes I also consider possible alternatives to the Procedure Committee's proposals.

Departmental Committees

4. The Procedure Committee's proposals are designed to make Parliament more effective in scrutinising the work of Government. This aim is right in principle and in

/accordance

accordance with our philosophy on the protection of the liberties of the subject. We endorsed it in our Manifesto. I have set out in Annex A (paragraphs 3-7) the reasons why departmentally-related committees should be more effective than the present pattern. They would provide more systematic coverage for the areas of policy, with less duplication. Better knowledge of Departments' work should improve the quality of Committee reports and enhance the contribution they can make to informed public discussion. This could be of particular significance in the economic field where there is a need to promote well informed public debate. I have also described the risks in setting up Departmental Committees. They could become centres of attention and influence, detracting from the status of the Chamber. They could create more work for Ministers and officials, although we face that outcome even with the present pattern of Select Committees. We must balance these risks against the need for more effective Parliamentary scrutiny. I believe that we should strike a reasonable balance accepting the principle of departmentally-related committees for which there is strong support in the House, while safeguarding the efficient conduct of government.

The Number of Committees

5. The Procedure Committee's proposals for 12 Departmental Committees and up to 7 Sub-Committees are described in Annex A. I have examined the option of reducing the numbers (paragraph 8 of Annex A). I am sure however that if we so reduced the number there would be pressure for more sub-committees. I should therefore prefer to accept the Procedure Committee's own proposal for 12 main Committees and to take credit for doing so. We must, however, guard against a proliferation of investigative sub-committees and the setting up of large numbers of concurrent enquiries. I therefore propose that we should seek to reduce the permitted number of these sub-committees from 7 to 4.

cont/..

6. The existing "subject" Select Committees (page 2, Annex A) should be replaced by the new structure. We should, however, retain the Select Committee on the Parliamentary Commissioner for Administration in order to provide a focus for the PCA system (paragraph 11, Annex A). Under my recommendations 12 main Committees and 4 Sub-Committees would replace 5 main committees and 14 sub-committees, an overall reduction of 3. In addition, we shall be considering separately proposals for Select Committees on Scotland and Wales.

Powers

7. The Procedure Committee's recommendations on powers could have far-reaching consequences. We should not accept them as they stand, ~~and if any change is to be made it should be on~~ the more limited lines indicated in Annex B. ~~I propose, however, that there should be no change at this stage.~~ ^{I propose} ~~the~~ ^{Ministers,} The report has shown that the present powers of Select Committees are in some respects unclear or anomalous, but the Procedure Committee have produced no evidence of widespread difficulty or dissatisfaction with the way in which they have operated in practice. We ~~can reasonably~~ ^{could therefore} take the line that the case for new powers has not yet become established and that the matter should be looked at again in the light of experience after the new structure has been in operation for some time.

This is dealing with the question.

Parliamentary Handling

8. The Procedure Committee proposed in their Special Report a series of motions which would give effect to their main proposals on structure and powers. They would like us to allow the House to debate these motions on a free vote. We should not accept this mode of proceeding although a free vote is essential. We should have to table amendments to meet the points I have set out above, and this

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would draw direct attention to the differences between our proposals and those of the Procedure Committee. Instead we should table our own motions for the appointment of the new Committees, for the restrictions on sub-committees and for the same powers as those which Select Committees have traditionally possessed. Our motions would be subject to amendment and amendments would undoubtedly be tabled. We should still have to allow a free vote but we should have more control over the debate and we should be better able to rely on our supporters in a division. Once our motions were carried Members could be chosen to serve on the new Committees in time for them to start work after the Long Recess. Amendments to Standing Orders could follow later.

Conclusions:

9. I therefore propose that we should:

(a) Provide an early debate on the main proposals in the Procedure Committee's report which relate to Select Committees;

(b) Recommend to the House that the Procedure Committee's proposals for 12 departmentally-related Committees should be accepted, subject to closer restrictions on the power to appoint investigative sub-committees, and to the retention of the Select Committee on the PCA;

(c) ^{decide whether to} ~~Recommend that no changes in powers should be made~~ at this stage;

(d) Table Government motions accordingly.

10. I will in due course bring forward a further paper on the remaining recommendations of the Procedure Committee which need not be debated until the autumn.

STRUCTURE OF SELECT COMMITTEES

Procedure Committee's Recommendations

1. The Procedure Committee recommend the establishment of 12 new departmentally-related Select Committees, with broad terms of reference, simply drawn (eg "to consider defence") and permissive rather than mandatory in character. They would cover:

Agriculture

Defence

Education, Science and Arts

Energy

Environment

Foreign Affairs

Home Affairs (to cover the Home Office and the
Lord Chancellor's and Law Officer's
Departments)

Industry and Employment (to cover both Departments)

Social Services

Trade and Consumer Affairs

Transport

Treasury (to cover the Treasury and the Civil
Service Department)

2. Together the Committees would cover the responsibilities of all Government departments and the nationalised industries; and they would replace the present subject Committees and their sub-committees.* They would "for the present" be empowered to consider matters relating to Scotland, Wales and Northern Ireland, and there would be provision for the appointment of up to 7 investigative sub-committees. There would be a joint sub-committee on nationalised industries, and the Foreign Affairs, Home Affairs and Treasury Committee

/would each

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would each have power to appoint two sub-committees. Twelve Committees and up to 7 sub-committees would thus replace 6 Committees and 14 sub-committees. The remainder of the House of Commons select committee system, including the Public Accounts Committee, would remain as at present.

Subject and departmentally-related Committees.

3. The present subject Committees have grown up piecemeal over the years, with no coherent structure or clear definition of their scope. Their coverage is uneven, with some areas of policy not covered at all and others covered by more than one Committee. Individual Committees have often interpreted their orders of reference in their own way, and the sub-committees of the Expenditure Committee

have not/

* ie the Expenditure Committee, with its General sub-committee and sub-committees on Defence and External Affairs; Environment; Trade and Industry; Education Arts and Home Office; and Social Services and Employment; the Select Committee on Nationalised Industries, with its sub-committees A - E; the Select Committee on Overseas Development; the Select Committee on Race Relations & Immigration; the Select Committee on Science and Technology, with its General Purposes sub-committee and sub-committees on Genetic Engineering and Technological Innovation; and the Select Committee on the Parliamentary Commissioner for Administration.

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have not, for example, felt that their restriction to expenditure matters inhibits them from considering such wider policy issues as youth unemployment (examined by the Social Services and Employment sub-committee), planning procedures (examined by the Environment sub-committee), or fishing limits and conservation or the wages and conditions of South African workers (examined by the Trade and Industry sub-committee). A more systematic structure is clearly needed if Parliamentary scrutiny is to be effective.

4. Departmentally-related Committees have the advantages of providing a more logical structure, giving each Committee a well-defined area of interest and a clear-cut relationship with its department (or departments). They should be able to build up a knowledge of their departments' work and a degree of expertise in their affairs which would make the Committees' enquiries more penetrating and also more economical in the effort demanded, both from their own members and their permanent staff and advisers and from Ministers and officials of the department itself. They could make a more positive and authoritative contribution to the wider national debate on the major issues facing their departments, for example in the critical areas of economic and industrial policy.

5. There are also risks. More expert Committees could become centres of influence which would detract from the importance of the Chamber. They might weaken collective responsibility. They could create more work for Ministers and their departments.

6. A balance must therefore be struck between the advantages of more effective Parliamentary scrutiny and the risks of greater friction and extra work. The possible

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sources of friction and of extra work do not, however, lie in the structure of Select Committees but in their attitudes and the way in which they operate. A structure of departmentally-related Committees would bring some areas of policy, for example in the fields of economic and monetary matters, explicitly within the orders of reference of Select Committees for the first time, but for other departments it would be no more than a rationalisation of existing practice. The new structure would not itself change existing relationships between the Committees, Parliament as a whole, Ministers and their departments; and the increase in the commitments of Ministers and their departments need not be greater than must be expected even if the existing Committees and their sub-committees continue on the present basis. The increase in the activities of Select Committees which has taken place in recent years reflects a more general assertiveness on the part of Members which is unlikely to be suppressed by resistance to changes in structure.

7. Apart from the implications for Ministers and departmental officials, the Procedure Committee consider that some increase would be needed in the number and quality of the Select Committees' permanent staff and specialist advisers. Arrangements for such appointments and any restrictions on their numbers would be matters for the House itself, and for the House of Commons Commission, but the Government could exercise a restraining influence through their representatives on the Commission. The House authorities do not, however, consider that any major new recruitment is needed and tell me that if the House decided on the full implementation of the Procedure Committee's recommendations, they could staff the new system.

Alternatives to the Procedure Committee's Proposals

8. The Procedure Committee recognised that there is room for argument about the number of new Committees, and various alternatives can be considered. The number could be reduced if a single Committee were to cover more departments with related functions. A structure which linked Environment with Transport, Trade with Industry and Employment, and Foreign Affairs with Defence would give a total of 9 committees. Alternatives of this kind could have some advantage in areas of study where more than one department is concerned and where some special machinery for co-ordination between Committees might otherwise be needed. On the other hand, ~~a~~ proposals for fewer Committees would be criticised as restricting their scope and making them less effective; there would be pressure - which would be difficult to resist - for larger Committees and greater discretion to set up sub-committees. The resulting structure might not be very different in practical terms, but relationships between sub-committees, main Committees, Ministers and their departments might be more confused. Neither alternative, nor any variation of them, is obviously superior to the Procedure Committee's own proposal and all could be criticised as producing anomalies in the relative weight of the subjects to be covered by individual Committees or in the particular groupings that were chosen.

The existing informal Liaison Committee of Select Committee Chairmen has worked satisfactorily in the past and would provide a machinery for resolving problems in areas which are of interest to more than one Committee. The Procedure Committee recommend that the Liaison Committee should be placed on a formal basis. This seems a sensible proposal, but a decision is not needed at this stage.

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Given the support for the Procedure Committee's proposals in general, and the political advantage of accepting them wherever possible, I recommend accepting the structure of 12 departmentally-related Committees as they put it forward.

9. We must, however, guard against a proliferation of investigative sub-committees and the danger of an excessive number of simultaneous enquiries which could unduly distract departments from discharging their ordinary business. I therefore propose that there should be a limit on the Committees' power to appoint sub-committees, without the approval of the House as a whole, to a joint sub-committee on Nationalised Industries (see paragraph 10 below) and to one rather than two sub-committees for each of the Treasury, Foreign Affairs and Home Affairs Committees. Paragraphs 5.35 - 5.44 of the Procedure Committee's report, which indicate the purposes for which such sub-committees might be appointed, could be quoted in support of such a restriction.

Other Subject Committees

10. We must stand firm on the principle, endorsed by the Procedure Committee, that if departmentally-related Committees are appointed, parallel subject Committees should be abolished. Opposition is likely to be strongest in respect of the Select Committee on Nationalised Industries, for the reasons which the Procedure Committee considered but rejected in paragraphs 5.35 - 5.39 of their Report. There should be a single body able to consider questions common to more than one industry, but a joint sub-committee of the departmentally-related Committees which are concerned with the nationalised industries should be sufficient. There should be no difficulty in arranging for the new Committees to take over unfinished business from the old where it would be worthwhile for them to do so.

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Select Committee on the Parliamentary Commissioner for
Administration

11. We ought, however, to consider the special case which exists for retaining the Select Committee on the Parliamentary Commissioner for Administration, which has functions similar in some respects to those of the Public Accounts Committee. On the one hand the departmentally-related Committees will be familiar with the work of the departments concerned and could be expected to develop an approach to questions of maladministration that took account of a Department's work as a whole. On the other, there are advantages in retaining a committee to keep the PCA system as a whole under review, and to consider individual cases on the basis of principles common to every department. I recommend that the Committee should be retained.

Conclusions

12. To sum up therefore:

- (a) Departmentally-related Select Committees would create a more comprehensive and rational system for Parliamentary scrutiny of the Executive. This need not produce significantly more work for Ministers and their departments than is likely to develop from the existing structure. I recommend that the principle should be accepted, and also the Procedure Committee's specific proposals for 12 Committees.

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- (b) We should guard against a proliferation of investigative sub-committees or an excessive number of simultaneous enquiries. We should therefore reduce from 7 to 4 the number of investigative sub-committees which could be set up without the approval of the House as a whole.
- (c) The existing subject Committees must not continue alongside a structure of departmentally-related Committees that is intended to replace them, but special considerations apply to the Select Committee on the Parliamentary Commission for Administration, which should be retained.

POWERS OF SELECT COMMITTEES

The Procedure Committee's Proposals

1. The Procedure Committee propose that "select committees should be empowered to order the attendance of Ministers to give evidence to them and to order the production of papers and records by Ministers, including Secretaries of State" (recommendation 64), and that "in the event of a refusal by a Minister to produce papers and records required by a Select Committee the Committee should be empowered to claim precedence over public business for a debate on a Motion for an Address or for an order for the Return of Papers, unless time is provided by the Government by the sixth sitting day after the first appearance of the Motion" (recommendation 65).

Existing Powers of Select Committees

2. The existing powers of Select Committees to send for persons, papers and records are set out in a memorandum by the Clerk of the House which is reproduced at Appendix C of the Select Committee's report. It emphasises that Select Committees normally act informally (by request rather than by order), and that their formal powers in these matters are somewhat uncertain, rarely used and almost entirely dependent upon their endorsement by the House as a whole. A Select Committee may thus invite a Minister (like any other Member) to attend before them, but would require a resolution of the House to enforce that request if the Minister did not agree to attend. Similarly, a Select Committee may not at present demand any papers held in the custody of a

Minister which if required by the House itself would need to be sought by an Address to the Queen.

Attendance of Ministers

3. The Procedure Committee's proposals, if taken literally, would make three major changes. In the first place they would enable Select Committees to order the attendance of any Minister, and not only the Minister departmentally responsible. We should resist the suggestion that a Committee of the House should be entitled to do this. Such a power could be used in an attempt to expose differences between Ministers, thereby undermining the collective responsibility of Government. The Government should retain the power to decide which Minister should represent them before a Committee or whether they should be represented by a Minister or an official.

Production of Papers and Records

4. Secondly, the proposals would give Select Committees the power to "order" the production of any Ministerial papers and records. An unqualified presumption that all departmental papers were potentially accessible to Select Committees would clearly be unacceptable. There will inevitably be occasions when Ministers consider that it would not be in the public interest to disclose documents or information. Cabinet and Cabinet Committee papers; sensitive information or papers dealing with defence and foreign relations, law enforcement, security and intelligence, or the currency and the reserves; papers the disclosure of which would infringe the privacy of the individual: and documents offering

advice or comments by officials to Ministers must all continue to be protected. If thought necessary, explicit restrictions could be made.

5. In practice there have been few complaints of Ministerial reluctance either to appear before Select Committees or to provide information. Subject to their comparatively minor reservations about departmental organisation and consultation with non-departmental bodies (paragraphs 7.15 and 7.16 of their report), the Procedure Committee were broadly satisfied with the co-operation which Select Committees already receive from Government Departments, and with the Memorandum of Guidance for Officials appearing before Select Committees (reproduced as Appendix D of the Procedure Committee's Report). Under the procedures set out in this Memorandum, including the sidelining procedure, Ministers and officials provide, as necessary and at their discretion, sensitive information which is not to be publicly disclosed. Some detailed changes to the Memorandum of Guidance will be needed in the light of the Procedure Committee's report, but otherwise the existing procedures should be maintained.

Enforcement

6. Thirdly, the proposals would enable a Select Committee to force a debate on the Floor of the House if a Minister refused its order to attend or to produce papers or records. This right would place a very considerable power in the hands of a Committee which might not be representative of general opinion in the House. If there is to be a procedure for forcing a debate, it should be activated only in

response to a much wider expression of opinion by Members of Parliament. A suitable procedure could if necessary be worked out in detail with the Clerks if the principle were accepted.

7. On a secondary point, the use of the term "order" must be avoided. It is a general Parliamentary principle that Members of either House - including Ministers - are "invited" and not "ordered" to attend Select Committees (and in the case of a Peer the Lords must be moved to give leave). Furthermore, the term "order" is usually associated with the possibility of proceedings against an offender for being in contempt of the House. Any procedure for enforcing the wishes of a Select Committee must be a matter for the House as a whole, not as a matter of privilege, but by the normal means of confidence motions or the withholding of supply.

8. I recommend against conceding any changes in powers at this stage. If it becomes necessary to do so, we must ensure that -

(a) The Government continue to be able to decide which Minister should represent them before a Select Committee.

(b) Ministers continue to be able to protect certain documents and information from disclosure.

(c) Select Committees do not have a power to "order" the attendance of Ministers or the production of Ministerial papers: their powers should be in terms of an "invitation" or a "request".

(d) Any power to force debate on a Ministerial refusal to attend or to produce papers and records; should require clear evidence of widespread concern in the House as a whole.

(e) Any enforcement should be as a matter of confidence or supply and not as a matter of privilege.

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NCBM



HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

7 June 1979

Dear John

HOUSE OF COMMONS PROCEDURE

The Chancellor of the Duchy of Lancaster sent the Home Secretary a copy of his letter of 5 June to the Lord Chancellor about the proposed Select Committee on Home Affairs.

Subject to the outcome of discussion in Cabinet of the Chancellor's proposals as a whole, the Home Secretary would have no objection to one of the twelve Departmentally related Select Committees being a Select Committee on Home Affairs which would cover not only the Home Office but the Lord Chancellor's office and the Law Officers' Department as well.

The Home Secretary would also support the Chancellor's intention to limit the proposed Select Committee to the appointment of a single investigative Sub-Committee: this would be consistent with our efforts to streamline Departments. The Home Secretary wishes, however, to sound a warning that this is likely to meet with some opposition from Members who have served on the Select Committee on Race Relations and Immigration (and perhaps others too) on the ground that they regard matters concerning immigration and race relations as being much in need of continuous Parliamentary investigation as when that Committee had an independent existence.

I am sending copies of this letter to Nick Sanders (No. 10) and Ian Maxwell (Lord Chancellor's Office).

Yours sincerely

Tony Butler

(A J BUTLER)

John Stevens Esq

CONFIDENTIAL

8 JUN 1979





Government Chief Whip
12 Downing Street, London SW1

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R8.

6 June 1979

NBPM
MS

The Chief Whip has seen a copy of the Chancellor of the Duchy of Lancaster's minute of 24 May to the Prime Minister on Procedure. He has asked me to say that he is particularly anxious to implement the proposal to start Friday sittings at 9.30 am.

I am sending a copy of this letter to Nick Sanders (No. 10), Alan Coghill (Home Office) and Martin Vile (Cabinet Office)

(M MACLEAN)

J Stevens Esq
Office of the Chancellor of the
Duchy of Lancaster
Privy Council Office
68 Whitehall
SW1

8 JUN 1970



K 0250

CHANCELLOR OF THE DUCHY OF LANCASTER

HOUSE OF COMMONS PROCEDURE

- 1. I attach a draft paper for circulation to Cabinet. The Prime Minister has said that she would like to see a copy in advance and she would like to receive it no later than to-morrow.

2. The paper proposes:
 - (a) accepting in full the Procedure Committee's proposals for 12 departmentally-related Committees, but with restrictions on sub-committees and total membership;
 - (b) deferring changes in powers.

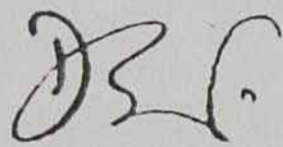
I expect some of your colleagues will suggest a smaller number of Committees with larger groupings of departments (which would help to meet the Prime Minister's point about reinforcing departmental separatism). I hope you will think the arguments on both sides are set out fairly with adequate support for your own recommendation.

3. On powers, I would expect your recommendation to be acceptable to the Cabinet, but there is bound to be considerable opposition in the House of Commons. The Motions to set up the new Committees will be amendable and there are bound to be amendments which will seek to give them the full powers which the Procedure Committee propose. You will want to be sure of adequate support to defeat them, even on a free vote, and you may think that it would be useful to have some discussion in the Party between the Cabinet meeting and the debate. I understand that you will be meeting Mr Du Cann on Monday.

4. The present intention is to have the debate on Monday, 25 June. This will involve announcing it in the Business Statement immediately after Cabinet and tabling Motions early in the following week. There should be no need for you to consult colleagues on the Motions themselves: we will have them drafted in the light of the Cabinet conclusions in time for them to go down on Monday or Tuesday, 18 or 19 June, and to appear in the following day's Order Paper.

5. The Paper says nothing about selection of members for the new Standing Committees. This is, of course, the subject of Mr English's Motion which is on the Order Paper for Monday, 11 June, but I understand that you intend to deal with the matter administratively through the usual channels. There will therefore be no need for any special Government initiative, and no need to consult colleagues in Cabinet, but you can, of course, explain your own intentions if the point is raised.

6. We can amend the Paper if necessary in the light of any points which the Prime Minister may make and we will let you have a brief for the Cabinet discussion. We are, of course, available if you would like to discuss.



D E R FAULKNER

6 June 1979

CABINET

HOUSE OF COMMONS PROCEDURE

Memorandum by the Chancellor of the Duchy of Lancaster

1. We must decide our attitude to the changes in the procedure of the House of Commons which were proposed in the first report from the Select Committee on Procedure for Session 1977/78. We promised in The Queen's Speech that members of the House of Commons would be given an opportunity to discuss and amend their procedures, particularly as they relate to the scrutiny of the work of Government; a Motion urging me to ensure that the House has an early opportunity to take decisions in the matter has attracted over 250 signatures; and a debate has been promised shortly after the Whitsun Recess.

The Procedure Committee's Recommendations

2. The Report dealt with public bills, subordinate legislation, European legislation, Select Committees, financial control and the organisation of sessions and sittings. But the main interest is in Select Committees and the proposals for:

(a) A new structure of 12 departmentally-related Select Committees, replacing the existing Expenditure Committee, the Select Committees on Nationalised Industries, Science and Technology, Overseas Development, Race Relations and Immigration, and the Select Committee on the Parliamentary Commissioner for Administration (PCA), together with their sub-committees. Some Committees would have powers to set up investigative sub-committees, up to a total of 7 in all.

(b) Powers enabling the new Select Committees to "order" the attendance of Ministers to give evidence and to "order" the production of papers and records. In the event of a refusal the Committee would be empowered to claim precedence over public business for a debate in the House unless time were provided by the Government on the sixth sitting day after the first appearance of the Motion.

3. The details are set out in Annex A (on the structure of Select Committees) and Annex B (on their powers). In these Annexes I also consider possible alternatives to the Procedure Committee's proposals.

Departmental Committees

4. ^{The} Procedure Committee's proposals are designed to make Parliament more effective in scrutinising the work of Government. We endorsed this aim in our Manifesto. I have set out in Annex A (paragraphs 3-7) the reasons why departmentally-related committees should be more effective than the present pattern. They would provide more systematic coverage for the areas of policy, with less duplication. Better knowledge of Departments' work should improve the quality of Committee reports and enhance the contribution they can make to informed public discussion. I have also described the risks in setting up Departmental Committees. They could become powerful centres of influence, detracting from Parliament as a whole. They could work to undermine Ministerial accountability to the House. They might weaken collective responsibility, becoming the champions of Departments, encouraging increased spending and departmental separatism. They would create more work for Ministers and officials, although we face that even with the present pattern of Select Committees. We must balance these risks and the possible weakening of ~~g~~ Government against the need for more effective Parliamentary scrutiny. I believe that we should accept the principle of departmentally-related committees for which there is strong support in the House, while safeguarding the efficient conduct of ~~g~~ Government.

The Number of Committees

5. The Procedure Committee's proposals for 12 Departmental Committees and up to 7 Sub-Committees are described in Annex A. I have examined the options of reducing the numbers to 9 and to 6 main Committees (paragraph 8 of Annex A). From the *Executives* Government's point of view there would be advantage in a smaller number of Committees, although I am sure there would be pressure for more sub-committees. Neither of the alternatives is so obviously preferable *however* that we could put it forward as a clear improvement. I should therefore prefer to accept the Procedure Committee's own proposal for 12 main Committees and to take credit for doing so. We must, however, guard against a proliferation of investigative sub-committees and the setting up of large numbers of concurrent enquiries. I therefore propose that we should seek to reduce the permitted number of these sub-committees from 7 to 4, and to place a formal limit of 120 on the total membership of Departmental Committees.

6. The existing "subject" Select Committees (page 2, Annex A) should be replaced by the new structure. We should, however, retain the Select Committee on the Parliamentary Commissioner for Administration in order to provide a focus for the PCA system (paragraph 11, Annex A). Under my recommendations 12 main Committees and 4 Sub-Committees would replace 5 main committees and 14 sub-committees. In addition, we shall be considering separately proposals for Select Committees on Scotland and Wales.

Powers

7. The Procedure Committee's recommendations on powers could have far-reaching consequences. We should not accept them as they stand, and if any change is to be made it should be on the more limited lines indicated in Annex B. I propose, however, that there should be no change at this stage. The report has shown that the present powers of Select Committees are in some respects unclear or anomalous, but the Procedure Committee have produced no evidence of widespread difficulty or dissatisfaction with the way in which they have operated in practice. We can

reasonably take the line that the case for new powers has not yet become established and that the matter should be looked at again in the light of experience after the new structure has been in operation for some time.

Parliamentary Handling

8. The Procedure Committee proposed in their Special Report a series of motions which would give effect to their main proposals on structure and powers. They would like us to allow the House to debate these motions on a free vote. We should not accept this proposal. We should have to table amendments to meet the points I have set out above, and this would draw direct attention to the differences between our proposals and those of the Procedure Committee. Instead we should table our own motions for the appointment of the new Committees, for the restrictions on sub-committees and total membership, and for the same powers as those which Select Committees have traditionally possessed. Our motions would be subject to amendment and amendments would undoubtedly be tabled. We should still have to allow a free vote but we should have more control over the debate and we should be better able to rely on our supporters in a division. Once our motions were carried Members could be chosen to serve on the new Committees in time for them to start work after the Long Recess. Amendments to Standing Orders could follow later.

Conclusions

9. I therefore propose that we should:

- (a) Provide an early debate on the main proposals in the Procedure Committee's report which relate to Select Committees;
- (b) Recommend to the House that the Procedure Committee's proposals for 12 departmentally-related Committees should be accepted, subject to closer restrictions on the power to appoint investigative sub-committees, to a limit on total membership, and to the retention of the Select Committee on the PCA;

(c) Recommend that no change in powers should be made at this stage;

(d) Table Government motions accordingly.

10. I will in due course bring forward a further paper on the remaining recommendations of the Procedure Committee which need not be debated until the autumn.

STRUCTURE OF SELECT COMMITTEES

Procedure Committee's Recommendations

1. The Procedure Committee recommend the establishment of 12 new departmentally-related Select Committees, with broad terms of reference, simply drawn (eg "to consider defence") and permissive rather than mandatory in character. They would cover:

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Education, Science and Arts

Energy

Environment

Foreign Affairs

Home Affairs (to cover the Home Office and the
Lord Chancellor's and Law Officer's
Departments)

Industry and Employment (to cover both Departments)

Social Services

Trade and Consumer Affairs

Transport

Treasury (to cover the Treasury and the Civil
Service Department)

2. Together the Committees would cover the responsibilities of all Government departments and the nationalised industries; and they would

replace the present subject Committees and their sub-committees.* They would "for the present" be empowered to consider matters relating to Scotland, Wales and Northern Ireland, and there would be provision for the appointment of up to 7 investigative sub-committees. There would be a joint sub-committee on nationalised industries, and the Foreign Affairs, Home Affairs and Treasury Committees would each have power to appoint two sub-committees. Twelve Committees and up to 7 sub-committees would thus replace 6 Committees and 14 sub-committees. The remainder of the House of Commons select committee system, including the Public Accounts Committee, would remain as at present.

Subject and departmentally-related Committees

3. The present subject Committees have grown up piecemeal over the years, with no coherent structure or clear definition of their scope. Their coverage is uneven, with some areas of policy not covered at all and others covered by more than one Committee. Individual Committees have often interpreted their orders of reference in their own way, and the sub-committees

* ie the Expenditure Committee, with its General sub-committee and sub-committees on Defence and External Affairs; Environment; Trade and Industry; Education, Arts and Home Office; and Social Services and Employment;

the Select Committee on Nationalised Industries, with its sub-committees A - E;

the Select Committee on Overseas Development;

the Select Committee on Race Relations and Immigration;

the Select Committee on Science and Technology, with its General Purposes sub-committee and sub-committees on Genetic Engineering and Technological Innovation; and

the Select Committee on the Parliamentary Commissioner for Administration.

If the Expenditure Committee have not, for example, felt that their restriction to expenditure matters inhibits them from considering such wider policy issues as youth unemployment (examined by the Social Services and Employment sub-committee), planning procedures (examined by the Environment sub-committee), or fishing limits and conservation or the wages and conditions of South African workers (examined by the Trade and Industry sub-committee). A more systematic structure is clearly needed if Parliamentary scrutiny is to be effective.

4. Departmentally-related Committees have the advantages of providing a more logical structure, giving each Committee a well-defined area of interest and a clear-cut relationship with its department (or departments). They should be able to build up a knowledge of their departments' work and a degree of expertise in their affairs which would make the Committees' enquiries more penetrating and also more economical in the effort demanded, both from their own members and their permanent staff and advisers and from Ministers and officials of the department itself. They could make a more positive and authoritative contribution to the wider national debate on the major issues facing their departments, for example in the critical areas of economic and industrial policy.

5. There are also risks. More expect Committees could become powerful centres of influence which would detract from the importance of Parliament as a whole. They might develop an unduly close relationship with their departments, becoming pressure groups for increased spending or reinforcing departmental separatism. They could seek to use their position to frustrate necessary but unpopular measures or to undermine Ministerial accountability to the House as a whole. They might weaken collective responsibility. They would almost certainly create more work for Ministers and their departments.

6. A balance must therefore be struck between the advantages of more effective Parliamentary scrutiny and the risks of greater friction and extra work. The possible sources of friction and of extra work do not, however, lie in the structure of Select Committees but in their attitudes and the way in which they operate. A structure of departmentally-related Committees would bring some areas of policy, for example in the fields of economic and monetary matters and of international relations, explicitly within the orders of reference of Select Committees for the first time, but for other departments it would be no more than a rationalisation of existing practice. The new structure would not itself change existing relationships between the Committees, Parliament as a whole, Ministers and their departments; and the increase in the commitments of Ministers and their departments need not be greater than must be expected even if the existing Committees and their sub-committees continue on the present basis. The increase in the activities of Select Committees which has taken place in recent years reflects a more general assertiveness on the part of Members which is unlikely to be suppressed by resistance to changes in structure.

7. Apart from the implications for Ministers and departmental officials, the Procedure Committee consider that some increase would be needed in the number and quality of the Select Committees' permanent staff and specialist advisers. They recommended that arrangements to recruit extra staff should be set in hand immediately. Arrangements for their appointment and any restrictions on their numbers would be matters for the House itself, and for the House of Commons Commission, but the Government might eventually have to exercise a restraining influence through their representatives on the Commission. The House authorities do not, however, consider that any immediate action is required.

Alternatives to the Procedure Committee's Proposals

8. The Procedure Committee recognised that there is room for argument about the number of new Committees, and various alternatives can be considered. The number could be reduced if a single Committee were to cover more departments with related functions. A structure which linked Environment with Transport, Trade with Industry and Employment, and Foreign Affairs with Defence would give a total of 9 Committees; and if Agriculture, Education and Energy were also linked with other departments the number could be further reduced to 6. Alternatives of this kind could have some advantage in areas of study where more than one department is concerned and where some special machinery for co-ordination between Committees might otherwise be needed. On the other hand, a proposal for fewer Committees would be criticised as restricting their scope and making them less effective; there would be pressure - which would be difficult to resist - for larger Committees and greater discretion to set up sub-committees. The resulting structure might not be very different in practical terms, but relationships between sub-committees, main Committees, Ministers and their departments might be more confused. Neither alternative, nor any variation of them, is obviously superior to the Procedure Committee's own proposal and all could be criticised as producing anomalies in the relative weight of the subjects to be covered by individual Committees or in the particular groupings that were chosen. Given the support for the Procedure Committee's proposals in general, and the political advantage of accepting them wherever possible, I recommend accepting the structure of 12 departmentally-related Committees as they put it forward.

9. We must, however, guard against a proliferation of investigative sub-committees and the danger of an excessive number of simultaneous enquiries which could unduly distract departments from discharging their ordinary business. I therefore propose two restrictions:

- (a) A limit on the Committees' power to appoint sub-committees, without the approval of the House as a whole, to a joint sub-committee on Nationalised Industries (see paragraph 10 below) and to one rather than two sub-committees for each of the Treasury, Foreign Affairs and Home Affairs Committees. Paragraphs 5.35 - 5.44 of the Procedure Committee's report, which indicate the purposes for which such sub-committees might be appointed, could be quoted in support of such a restriction.
- (b) A formal limit (analagous to the limit of 49 placed on Members serving on the Expenditure Committee) on the total membership of departmentally-related Select Committees to the figure of 120 given in paragraph 5.54 of the report.

Other Subject Committees

10. We must stand firm on the principle, endorsed by the Procedure Committee, that if departmentally-related Committees are appointed, parallel subject Committees should be abolished. Opposition is likely to be strongest in respect of the Select Committee on Nationalised Industries, for the reasons which the Procedure Committee considered but rejected in

paragraphs 5.35 - 5.39 of their Report. There should be a single body able to consider questions common to more than one industry, but a joint sub-committee of the departmentally-related Committees which are concerned with the nationalised industries should be sufficient. There should be no difficulty in arranging for the new Committees to take over unfinished business from the old where it would be worthwhile for them to do so.

Select Committee on the Parliamentary Commissioner for Administration

11. We ought, however, to consider the special case which exists for retaining the Select Committee on the Parliamentary Commissioner for Administration, which has functions similar in some respects to those of the Public Accounts Committee. On the one hand the departmentally-related Committees will be familiar with the work of the departments concerned and could be expected to develop an approach to questions of maladministration that took account of a Department's work as a whole. On the other, there are advantages in retaining a committee to keep the PCA system as a whole under review, and to consider individual cases on the basis of principles common to every department. I recommend that the Committee should be retained.

Conclusions

12. To sum up therefore:

- (a) Departmentally-related Select Committees need not, in themselves, lead to greater friction or produce significantly more work for Ministers and their departments than could develop from the existing structure. I recommend that the principle should be accepted, and also the Procedure Committee's specific proposal for 12 Committees.

- (b) We should guard against a proliferation of investigative sub-committees or an excessive number of simultaneous enquiries. We should therefore reduce from 7 to 4 the number of investigative sub-committees which could be set up without the approval of the House as a whole, and we should place a formal limit of 120 on the Committees' total membership.
- (c) The existing subject Committees must not continue alongside a structure of departmentally-related Committees that is intended to replace them, but special considerations apply to the Select Committee on the Parliamentary Commission for Administration, which should be retained.

POWERS OF SELECT COMMITTEES

The Procedure Committee's Proposals

1. The Procedure Committee propose that "select committees should be empowered to order the attendance of Ministers to give evidence to them and to order the production of papers and records by Ministers, including Secretaries of State" (recommendation 64), and that "in the event of a refusal by a Minister to produce papers and records required by a Select Committee the Committee should be empowered to claim precedence over public business for a debate on a Motion for an Address or for an order for the Return of Papers, unless time is provided by the Government by the sixth sitting day after the first appearance of the Motion" (recommendation 65).

Existing Powers of Select Committees

2. The existing powers of Select Committees to send for persons, papers and records are set out in a memorandum by the Clerk of the House which is reproduced at Appendix C of the Select Committee's report. It emphasises that Select Committees normally act informally (by request rather than by order), and that their formal powers in these matters are somewhat uncertain, rarely used and almost entirely dependent upon their endorsement by the House as a whole. A Select Committee may thus invite a Minister (like any other Member) to attend before them, but would require a resolution of the House to enforce that request if the Minister did not agree to attend. Similarly, a Select Committee may not at present demand any papers held in the custody of a Minister which if required by the House itself would need to be sought by an Address to the Queen.

Attendance of Ministers

3. The Procedure Committee's proposals, if taken literally, would make three major changes. In the first place they would enable Select Committees to order the attendance of any Minister, and not only the Minister departmentally responsible. We must resist the suggestion that a Committee of the House should be entitled to do this. Such a power could be used in an attempt to expose differences between Ministers, thereby undermining the collective responsibility of Government. The Government must retain the ability to decide which Minister should represent them before a Committee or whether they should be represented by a Minister or an official.

Production of Papers and Records

4. Secondly, the proposals would give Select Committees the power to "order" the production of any Ministerial papers and records. An unqualified presumption that all departmental papers were potentially accessible to Select Committees would clearly be unacceptable. There will inevitably be occasions when Ministers consider that it would not be in the public interest to disclose documents or information. Cabinet and Cabinet Committee papers; sensitive information or papers dealing with defence and foreign relations, law enforcement, security and intelligence, or the currency and the reserves; papers the disclosure of which would infringe the privacy of the individual; and documents offering advice or comments by officials to Ministers must all continue to be protected. Even outside these categories there may be circumstances which would lead Ministers to decide that it would not be in the public interest to disclose information. Ministers must therefore retain discretion whether or not to provide documents or information on any particular occasion, subject, of course, to their general answerability to Parliament and their obligation to justify such a decision to the House if required to do so.

5. In practice there have been few complaints of Ministerial reluctance either to appear before Select Committees or to provide information. Subject to their comparatively minor reservations about departmental organisation and consultation with non-departmental bodies (paragraphs 7.15 and 7.16 of their report), the Procedure Committee were broadly satisfied with the co-operation which Select Committees already receive from Government Departments, and with the Memorandum of Guidance for Officials appearing before Select Committees (reproduced as Appendix D of the Procedure Committee's Report). Under the procedures set out in this Memorandum, including the sidelining procedure, Ministers and officials provide, as necessary and at their discretion, sensitive information which is not to be publicly disclosed. Some detailed changes to the Memorandum of Guidance will be needed in the light of the Procedure Committee's report, but otherwise the existing procedures should be maintained.

Enforcement

6. Thirdly, the proposals would enable a Select Committee to force a debate on the Floor of the House if a Minister refused its order to attend or to produce papers or records. This right would place a very considerable power in the hands of a Committee which might not be representative of general opinion in the House. If there is to be a procedure for forcing a debate, it should be activated only in response to a much wider expression of opinion by Members of Parliament. A suitable procedure could if necessary be worked out in detail with the Clerks if the principle were accepted.

7. On a secondary point, the use of the term "order" must be avoided. It is a general Parliamentary principle that Members of either House - including Ministers - are "invited" and not "ordered" to attend Select Committees (and in the case of a peer the Lords must be moved to give leave).

More seriously, the term "order" is usually associated with the possibility of proceedings against an offender for being in contempt of the House. Any procedure for enforcing the wishes of a Select Committee must be a matter for the House as a whole, not as a matter of privilege, but by the normal means of confidence motions or the withholding of supply.

8. I recommend against conceding any changes in powers at this stage. If it becomes necessary to do so, we must ensure that -

- (a) The Government continue to be able to decide which Minister should represent them before a Select Committee.
- (b) Ministers continue to be able to protect certain documents and information from disclosure.
- (c) Select Committees do not have a power to "order" the attendance of Ministers or the production of Ministerial papers: their powers should be in terms of an "invitation" or a "request".
- (d) Any power to force debate on a Ministerial refusal to attend or to produce papers and records should require clear evidence of widespread concern in the House as a whole.
- (e) Any enforcement should be as a matter of confidence or supply and not as a matter of privilege.



Chancellor of the Duchy of Lancaster

Cabinet Office
70 Whitehall London SW1
Telephone 01-233 ~~XXXX~~ 5826

Parliament

5 June 1979

NBPM
MS

Dear Lord Chancellor

HOUSE OF COMMONS PROCEDURE

We had an informal word about the handling of the Procedure Committee's report and I sent you a copy of my minute of 24 May to the Prime Minister.

I am preparing a paper for discussion in Cabinet next week, and as I said when we met I am disposed to recommend that we should accept in full the Procedure Committee's proposal for 12 departmentally-related Select Committees. There would however be stricter limits than the Committee proposed on their power to appoint investigative sub-committees and there would be a formal limit on their total membership.

Before I circulate my paper, I should be grateful if you would let me know whether you see any special objection to accepting the proposal for a Select Committee on Home Affairs, to cover your own Department as well as the Home Office and the Law Officers' Department (paragraph 5.24 of the report). In recommending the setting up of this Committee I would also recommend that it should only have power to set up a single investigative sub-committee, and not two as the Procedure Committee proposed (one of which might be concerned particularly with race relations and immigration - paragraph 5.44).

It would be very helpful if you could let me know your views before this week-end. I am copying this letter to the Prime Minister, and the Home Secretary whose views would also be very welcome.

Yours sincerely
J W Stevens

(Approved by the Chancellor of the Duchy of Lancaster and signed in his absence by J W Stevens, Private Secretary)

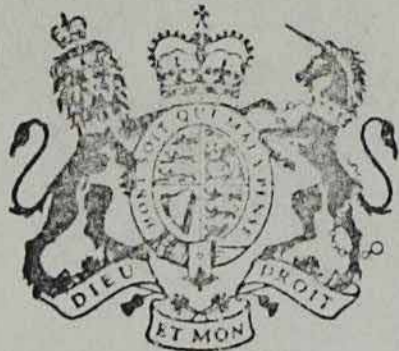
The Rt Hon, The Lord Hailsham of Saint Marylebone, CH
Lord Chancellor



--55 JUN 1979

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Parliament file



BF 7/6/79

10 DOWNING STREET

From the Private Secretary

5 June 1979

Dear John

The Chancellor of the Duchy yesterday afternoon discussed with the Prime Minister the handling of the Report of the Select Committee on Procedure.

The Chancellor of the Duchy explained that early action was necessary. He referred to the Government's manifesto commitment to act on the Report. He explained that he saw little scope for changing the proposed package for the structure of Select Committees, but was confident of securing important safeguards in respect of their powers in three directions: he intended to limit the number of sub-committees which could be established; to limit their powers vis-à-vis Ministers so that they could invite, but not require, Ministers to give evidence; and to ensure that security considerations were properly handled.

The Prime Minister noted that the dates of 21 and 25 June were pencilled in for Parliamentary action which could therefore be announced in the Business Statement on 14 June. She agreed that Cabinet should consider the question on 14 June. She instructed the Chancellor of the Duchy to submit for that discussion a thorough paper, which should set out in detail the arguments for and against both the existing structure of Select Committees and the proposed new structure, and which should also consider some reasonable alternative proposals. In stressing the need for the Cabinet to have the chance of considering alternatives, she drew attention to a number of possible criticisms of the new proposals. These included the risk that they would reinforce the rigid demarcation of business between departments, and would become pressure groups for increased spending by the departments which they monitored; the difficulty in accepting as a whole the Report's proposals for new Select Committees, given the real need for exceptions in some areas, for example, in respect of the Parliamentary Commissioner for Administration's affairs; the possible problems over security; the difficulty of controlling expenditure on the activities of the committees; and the problem of treatment for Scottish and Welsh affairs.

It may be helpful for you to know, that in another context, the Prime Minister has drawn attention to the need to widen the economic debate in the country, and to the possible value in this respect of informed consideration by Select Committees on, for example, fundamental economic and industrial issues, coupled with detailed questioning of those involved.

/It would be

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- 2 -

It would be helpful if the Prime Minister were to see a draft of the Chancellor of the Duchy's paper before it is circulated to Cabinet. Could you please aim to let us have this by close of play on Thursday 7 June.

I am sending a copy of this letter only to Martin Vile (Cabinet Office).

Yours ever

Mike Pattison

John Stevens, Esq.,
Office of the Chancellor of the Duchy of Lancaster.

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RECORD OF A MEETING AT 10 DOWNING STREET TO DISCUSS HOUSE OF COMMONS
PROCEDURE ON 4 JUNE AT 1700

Present: Prime Minister Chancellor of the Duchy of Lancaster
 Mr. Ian Gow
 Mr. Mike Pattison

The Prime Minister acknowledged that early action was expected on the recommendations of the Committee on Procedure but noted that the Government had not settled its position, nor the criteria on which it would take a position. She had doubts about the new structure for Select Committees proposed in the Report. She would much prefer to see a system strengthening co-ordination across the demarcation lines between Ministries: the proposals were more likely to re-enforce the demarcation. She asked whether she should speak to the Chairman of the 1922 Committee. The Chancellor of the Duchy of Lancaster said that he had not recently spoken to Mr. du Cann, but knew that he favoured the package. The Early Day Motion on the subject had been signed by virtually all members of the 1922 Committee's Executive. The Prime Minister said that the Motion did not just call for a debate on the Report, but focussed on the proposed Select Committees and their powers. The Government had not prepared a position on either the numbers or the powers of the Committees. The CDL said that officials in all Departments had been consulted, and that he had particularly consulted the Home Secretary and the Lord Chancellor. There was general agreement that the proposals must be put before the House. He felt that the crucial issue was not the structure of Select Committees but their powers and numbers.

The Prime Minister said that the options had not yet been set out for Ministers. It was unacceptable that the House should be presented with a simple yes or no decision on the specific proposals made by the Committee. She felt, for example, that the abolition of the existing Science and Technology Committee would be a retrograde step. The CDL felt that the Government had little choice, given its Manifesto pledge. The Procedure Committee's Report had been unanimous on Select Committees, and those who had spoken in the two-day debate had overwhelmingly favoured the recommendations. The proposals were a rationalisation

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of what had grown up. The Prime Minister disputed this. The existing Committees e.g. PAC, Expenditure Committee and Nationalised Industries Committee, could handle many questions more effectively. The CDL said that he was aiming to restrict the proliferation of Sub-Committees, and to cut back the proposals made on the powers of Select Committees. He felt he could hold the line on the Committees being empowered to invite not require Ministers to give evidence. The Government could not expect to be in full control of what had to be a House of Commons matter. Twenty-five new Members of Parliament had already signed the Early Day Motion. The Prime Minister said that this did not improve her view of those new Members. She felt that the present system was much better. But those who shared her view appeared to be offered no alternative to consider, but simply a yes/no option on these proposals. She asked how security considerations were to be taken into account. The CDL assured her that arrangements would be agreed to safeguard sensitive issues covering defence, security or international relations. This, together with his proposal to reduce the number of Sub-Committees which could be created, and his proposal to protect the position of Ministers, amounted to quite extensive safeguards in the crucial areas.

The Prime Minister felt that the new Committees could well prove to be a monumental waste of time, and they would undoubtedly invent expensive travel proposals. She asked how these could be controlled when there were no effective cash limits. The House of Commons Commission was not effective in this respect. She pointed to the proposal to transfer responsibility for monitoring the work of the Ombudsman as another example destroying existing effective procedures. The CDL noted that he had proposed the retention of that particular Committee. Mr. Gow drew attention to the special factors relevant to that case.

The Prime Minister asked how the requirements of Scotland and Wales were to be dealt with. The CDL said that Scotland was a separate issue, where a decision would emerge after the All Party talks. The handling of Wales and Northern Ireland would be considered in the context of the present Report. If, as the Prime Minister suggested, a number of Scottish MPs were to table a Motion calling for a Select Committee, he would refer to the All Party talks as the appropriate forum to consider this. The Prime Minister asked why that particular issue should be any less a matter for the House than the proposals for other Select Committees.

/ The CDL

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The CDL stressed that he had to act quickly. The Prime Minister said that there must be a much more detailed paper: she suspected that the Government was giving way all too easily on these proposals. The CDL said that he had wished to discuss the matter with her before setting out details, and that he saw no real alternative approach. The Party, whilst never committed to these twelve Select Committees, had given a commitment to reform on the basis of the Report. The Prime Minister commented that that had slipped through without a proper paper to consider. That experience must not be repeated: she did not regard this as a genuine commitment. Cabinet must consider a paper setting out the options for and against the existing structure and for and against the proposed new structure, and setting out clearly the numbers of Committees involved. She was aware that the dates of 21 or 25 June were being considered for discussion in the House, and that this would allow an announcement to be made in the business statement on budget day. Cabinet would have to decide what position to take, and whether to vote together or abstain. She remained sceptical. She did not accept the Chancellor of the Duchy's view that an intelligent Minister should see no problems with the Select Committees. They would tend to become pressure groups for additional expenditure in those fields, regardless of the approach of this Government to public expenditure. She reiterated her view that the Select Committee system would reinforce the cracks of the Departmental system, and felt that many who had served on the previous Committees would oppose change. She was nevertheless ready to consider the Chancellor of the Duchy's paper at Cabinet on 14 June. This paper must be thorough, and must also include a discussion of the Scotland and Wales issues.

4 June 1979

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PRIME MINISTER

You are seeing Mr. St. John-Stevas at 1700 on Monday to discuss House of Commons procedure.

Sir John Hunt offers comments at Flag A on Mr. St. John-Stevas' original minute (Flag B). The Select Committee's report is loose in this folder.

Sir John suggests that you invite Mr. St. John-Stevas to submit a paper to Cabinet for consideration on 14 June. His recommendations for the nature of this paper are in paragraph 7 of his minute.

1 June 1979

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PRIME MINISTER

House of Commons Procedure

You asked for my advice on the Chancellor of the Duchy of Lancaster's minute of 24th May.

2. In the House last Thursday you expressed the hope that there would be an early opportunity of debating procedural motions before the summer recess. The recommendations in favour of departmentally-related Select Committees are the most urgent. An early debate on those recommendations would do much to relieve the pressure represented by the 250 signatories of the early day motion. But I doubt if you would want to go into this without having discussed the matter collectively and preferably reached a Government view - and as I warned you orally the other day many of your colleagues seem to be shifting their views on this matter. This points to consideration of the proposals for Select Committees in Cabinet on 14th June, and I therefore suggest you invite the Chancellor of the Duchy to put in a paper as he has offered to do.

3. The Chancellor of the Duchy suggests that a debate on the recommendations in the rest of the report - on public Bills, EEC legislation, etc. - could be deferred until the autumn. I have no reason to question that. You will, however, want to see that proper consideration is given to these proposals in good time before then.

4. The main issues for Cabinet on Departmental Select Committees will be the question of principle, the number and powers of such Select Committees, and the handling of the debate in the House of Commons.

5. On the principle, the opposing arguments are clear enough. On the one hand that departmentally-related Committees would improve the effective scrutiny of the work of Government by Parliament and that there is a widespread feeling inside and outside the House that this is necessary.

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On the other hand the feeling that this development would detract from the importance of the House as a whole, would undermine Ministerial accountability to the House and possibly weaken collective responsibility by seeking to develop further their relationship with officials or by attempting to expose differences between Ministers' views. It can of course be argued that these risks ~~which~~ exist with the present Select Committees: and that they need become no more serious, provided the powers of Select Committees to summon Ministers and officials, and to call for papers and records are not greatly extended. Nevertheless they would undoubtedly add to the burdens of Ministers and their Departments at a time when the emphasis is on reducing the number of civil servants: and some areas of policy would for the first time be brought explicitly within the orders of reference of Select Committees. Most Departments take a relatively relaxed view about the matter: but this in turn raises the question whether the development would lead to too cosy a relationship between Departments and their shadowing committees. This is essentially a matter for political decision.

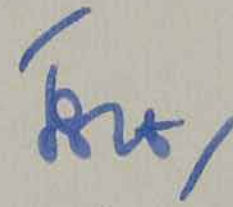
6. Even if the Government were prepared to move in the direction of the Procedure Committee recommendations two subsidiary points would need to be discussed:-

- (a) On numbers and powers, the feeling among officials has been slightly in favour of reducing the number of proposed new committees. The Chancellor refers to the possibility of modifying the Procedure Committee's recommendations and I suggest that you ask him to discuss the options in his paper.
- (b) The recommendations concerning the powers of Select Committees to order the attendance of Ministers and officials and the production of papers and records present much more difficulty. It would be possible to appoint Select Committees on a departmental basis but to make no change in their powers. The Procedure Committee pointed to some aspects of the existing powers which are anomalous or unclear, but they provided little evidence of difficulty or dissatisfaction with the way in which the present arrangements operate in

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practice. The Government might take the line that the question of powers need not be decided at present, but should be looked at again in the light of experience. If, however, the Cabinet judged that pressure for a change in powers is too strong to be headed off in this way, more limited proposals could be put forward to preserve the discretion of Ministers on attendance at Select Committees and on the production of papers. I suggest again that you should ask the Chancellor to spell out the options.

7. Unless therefore you want to give a strong lead to him at this stage, I suggest that you invite the Chancellor of the Duchy to put in the paper he suggests, with his recommendations, for early discussion in Cabinet. You will wish him to spell out the arguments for and against Departmental Committees, the options for the number of Committees, and for the treatment of the recommendations on powers; and more generally to advise on the handling of the Procedure Committee's report.


John Hunt

1st June 1979



PRIME MINISTER

HOUSE OF COMMONS PROCEDURE

Your Private Secretary's letter of 8 May asked for my advice on the handling of the recommendations in the Report from the Procedure Committee, and on how we should follow up our Manifesto commitment which is clear and unequivocal about "giving the new House of Commons an early chance of coming to a decision on these proposals."

There is no doubt in my mind that we will have to fulfil our pledge. The consequences of going back on our undertakings would be extremely serious for the Government politically. My own standing in the House would be gravely prejudiced and it would only be a short time before this affected other members of the Government and the Prime Minister herself. The House would become a hornet's nest and we should have acute difficulty in getting our business through. It is no exaggeration to say that the whole legislative programme of the Government would be at risk. I have discussed these points several times with the Chief Whip who is in full agreement with this analysis.

We have undertaken in The Queen's Speech to give Members of the House of Commons an opportunity to discuss and amend their procedures, particularly as they relate to their scrutiny of the work of Government. A Motion has been put down - in the name of influential backbenchers of all parties - which has already attracted 248 signatures and to which more signatures are being added daily - urging me to ensure that the House has an early opportunity to take decisions on this matter, and I am under constant pressure to provide for an early debate.

I have had a full note on the Report from the Cabinet Office and I have had a preliminary discussion with officials. The Procedure Committee's recommendations cover Select Committees, Public Bill procedure, the handling of delegated legislation and European communities legislation, and various other matters. The proposals on Select Committees are those which attract the greatest interest and command the highest priority; decisions on most other parts of the Report could be deferred until the autumn.

PRIME MINISTER
Mr St John Stevas asks you for a meeting to talk about this - and plans to circulate a Cabinet paper for 14 June. Will you see him?

Yes - MS

MS

29/V

A debate is pencilled in for

25 June MS

I believe the Committee's recommendations are right in principle and in accordance with Conservative philosophy on the protection of the liberty of the subject, but it is not necessary to accept all the Procedure Committee's recommendations on Select Committees as they stand. I am convinced, however, that we should find it impossible to persuade the House against a move towards departmental Committees and that there would be strong resistance to any radical departure from the kind of structure which the Committee proposed. When one is making concessions it is a major tactical error to concede 90% and hold back 10%.

Procedurally, I suggest that we should go to the House with definite proposals of our own, tabling our own Motions and not leaving the matter in the hands of the House itself, with resulting loss of control. I should like to give more thought to the details of our proposals before putting them formally to colleagues. In general, however, I believe that we should accept the principle of departmentally-related Select Committees in place of the Expenditure Committee (and its sub-committees), and of most of the other Committees which the Procedure Committee proposed to abolish. We need to guard against a proliferation of Select sub-committees which would eventually require more House of Commons staff, and create more work for Ministers and officials. The Procedure Committee recommended 12 Committees. I think we should accept this - but impose restrictions on their powers to create sub-committees.

I have considered whether we should reduce the number of committees by grouping more departments together, e.g. Defence with Foreign Affairs or Trade with Industry, but I would prefer not to do so and it could be argued that grouping would strike at the whole principle of the reform which is intended to put on a rational basis a system of committees which has grown up piecemeal over the years. At present the total number of select committees and sub-committees number 42 with a Commons membership of 310. I attach a list of the committees in an appendix for your information. There is already a sub-committee covering Defence and Foreign Affairs. The Procedure Committee recommends the abolition of 20 of the committees and sub-committees and the appointment of 20 new committees and sub-committees. The number of committees would thus not be affected by the change.

With regard to the powers of the committees, I believe it essential to restrain them so that matters of security and the safety of the State do not come within their scope. This applies especially to matters coming within the authority of the Home Secretary. I would also recommend against the committee being able to "order" the attendance of Ministers or the unrestricted production of papers. The present practice of "inviting" Ministers to attend should be retained and in case of a deadlock, the matter should be decided as at present by the House.

There may well be resistance to these modifications by some Members of the House, but I believe we could persuade the House as a whole to accept them provided that we meet the wishes of Members on the structure of Select Committees. If we attempted in this report to move away from the proposals of the committee on procedure in this regard we should provoke considerable hostility, much of it amongst members of our own parliamentary party.

The changes would for the first time bring some areas of Government policy explicitly within the Orders of Reference of Select Committees, but they would be evolutionary in character and would not represent a major shift of emphasis away from the Chamber to Select Committees. However, it would give some Members of Parliament a chance to do something useful and specific. One of the problems we have to face in this Parliament is that it has a large number of able men quite capable of holding ministerial office but there are not enough ministerial jobs to go round.

If you agree, I will develop the proposals outlined in this letter and bring them to Cabinet immediately after the Whitsun Recess - I hope for the meeting on 14 June if the agenda allows. In the meantime, I propose to go ahead with arrangements for setting up those Select Committees which are not affected by the Procedure Committee's recommendations for departmental committees (for example the Committee on House of Commons (Services), Privileges, European Legislation and Statutory Instruments, for all of which business is beginning to accumulate); and to announce a firm intention to provide a debate on the recommendations for departmental committees before the Summer Recess.

This must
surely be right
MS

I am sending a copy of this minute to the Home Secretary and the Lord Chancellor, with whom I have had a preliminary discussion on what I have in mind, to the Chief Whip and Sir John Hunt.

N.S.H.S.

N St.J.S.

Prime Minister - I would be grateful for the opportunity to wait on you next week after Tuesday to discuss this important matter.

N.S.H.S.

24 May 1979

HOUSE OF COMMONS SELECT COMMITTEES RELATING TO PUBLIC
MATTERS, ETC.

CHAIRMEN'S PANEL
JOINT COMMITTEE ON CONSOLIDATION AND BILLS
COURT OF REFEREES
EUROPEAN LEGISLATION
SUB COMMITTEE I
SUB COMMITTEE II
SIFTING SUB COMMITTEE
EXPENDITURE
GENERAL SUB COMMITTEE
DEFENCE AND EXTERNAL AFFAIRS SUB COMMITTEE
ENVIRONMENT SUB COMMITTEE
TRADE AND INDUSTRY SUB COMMITTEE
EDUCATION, ARTS AND HOME OFFICE SUB COMMITTEE
SOCIAL SERVICES AND EMPLOYMENT SUB COMMITTEE
HOUSE OF COMMONS (SERVICES)
ACCOMMODATION AND ADMINISTRATION SUB COMMITTEE
CATERING SUB COMMITTEE
COMPUTER SUB COMMITTEE
LIBRARY SUB COMMITTEE
MEMBERS' INTERESTS
NATIONALISED INDUSTRIES
SUB COMMITTEE A
SUB COMMITTEE B
SUB COMMITTEE C
SUB COMMITTEE D
SUB COMMITTEE E
OVERSEAS DEVELOPMENT
PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION
PRIVILEGES
PROCEDURE
PUBLIC ACCOUNTS
RACE RELATIONS AND IMMIGRATION
SCIENCE AND TECHNOLOGY
GENERAL PURPOSES SUB COMMITTEE
GENETIC ENGINEERING SUB COMMITTEE
TECHNOLOGICAL INNOVATION SUB COMMITTEE
SELECTION
SOUND BROADCASTING
STANDING ORDERS
STATUTORY INSTRUMENTS (JOINT COMMITTEE)
STATUTORY INSTRUMENTS
UNOPPOSED BILLS

29 MAY 1979



CONFIDENTIAL



Parliament JS
cc CO
MO

10 DOWNING STREET

From the Private Secretary

8 May 1979

B.F. 17/5

HOUSE OF COMMONS PROCEDURE

The Conservative Party Manifesto included a commitment to giving the new House of Commons an early chance of coming to a decision on the proposals of the Procedure Committee.

✓ For this purpose, the Prime Minister would be grateful for early advice from the Chancellor of the Duchy of Lancaster on the handling of the various recommendations contained in the report. She is conscious that there is likely to be interest expressed early in the new Parliament about the reorganisation of select committees proposed in the report.

I am sending a copy of this letter to Martin Vile in the Cabinet Office.

M. A. PATTISON

John Stevens, Esq.,
Chancellor of the Duchy of Lancaster's Office.

