

Confidential Filing

The Government's Accountability for
Events under a Previous Administration

GOVERNMENT

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LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBIN BUTLER

**THE GOVERNMENT'S ACCOUNTABILITY FOR EVENTS UNDER A
PREVIOUS ADMINISTRATION**

The Prime Minister was grateful for the note which you submitted with your minute of 20 March. In particular she agrees that Ministers should always ask themselves whether it is necessary to answer questions about events under previous Administrations of a different Party, for which they were not responsible. In general, the presumption should be that Ministers should refuse to involve themselves in such matters.

Nevertheless there could be some allegations, e.g. attacks on the integrity of the Security Services, Armed Forces or Civil Service, that are so scandalous that it must be the responsibility of the Government in power to see that they are investigated and, if false, denied.

I am copying this minute to the Private Secretaries to all members of the Cabinet and the Attorney General.

AT

(ANDREW TURNBULL)
22 March 1990

DTS.



Prime Minister
FEDS has taken account
of your amendments. I propose
to insert at the attached or
to be
Center

Ref. A090/720

PRIME MINISTER

AT
20/3

Y
to no

The Government's Accountability for Events
Under Previous Administrations

attached

At Cabinet on 1 February (CC(90) 4th Meeting, Item 1), I was asked to advise on the accountability of the current Administration for events which took place under previous Administrations.

--- 2. I attach a paper on this. The main points, as they are likely to impact on Ministers, are summed up in the first three paragraphs.

3. I am copying this minute and the enclosure to the members of the Cabinet, Chief Whip, the Attorney General and the Minister of State, Privy Council Office.

R.R.B.

ROBIN BUTLER

20 March 1990

The Government's Accountability for Events Under Previous
Administrations

Summary

1. Present Ministers are not responsible to Parliament for events which took place under a previous Administration. However, questions about such events are from time to time addressed to them, and if action is required, whether by way of inquiry or to rectify things done wrong and prevent their recurrence, only the present Government can take such action.

2. Present Ministers are in a special difficulty in dealing with such questions when they relate to events under a previous Administration of a different Party because (subject to narrow exceptions) they do not by convention have access to the relevant papers. So they may reasonably first consider whether they should decline requests to give an account, or initiate action, in respect of events for which they are not responsible. If, however, they conclude in the circumstances of a particular case that it is impossible or inappropriate for them to stand aside, they have to rely on the advice of officials who have access to the papers and they should make clear that they are doing so. If Ministers take the view that they should receive advice from a third party who should be given access to the papers of a previous Administration (of whatever Party), the Government should consult the Prime Minister of the previous Administration and the previous Ministers who were in charge of the relevant Department. If they are not available the current leader of the political Party concerned should be consulted before authorising such access.

3. Civil servants act on behalf of present Ministers and similarly cannot be required to justify actions taken or approved by Ministers of a previous Administration. They may however be required to account for and justify actions taken by civil servants and they have access to the relevant papers in doing so. However, beyond saying, when appropriate, that actions were taken on Ministerial instructions or with their approval, civil

servants are not free (subject to the special procedure described in the footnote to paragraph 9 below) to reveal or discuss the role of previous Ministers.

Access by Ministers to documents of a previous administration

4. In July 1982, following the establishment of a Committee of Privy Counsellors to conduct the Falkland Islands Review, the Prime Minister approved the following summary of the conventions governing access to documents of a former administration:

- 1) Documents of a former Administration are the property of the Crown. The grant of access to them for any person not entitled in an official capacity to see them requires the agreement of the Government of the day until they are released as public records.
- 2) Ministers of a former Administration, whether currently in office or not, may see but may not retain official documents which they saw as members of that Administration.
- 3) Ministers of a current Administration may not see documents of a former Administration of a different political party.
- 4) Ministers of a current Administration may normally see documents of a former Administration of the same political party, whether or not they saw those documents as members of that Administration, provided that the requirement to see them arises in the course of their Ministerial duties. There may, however, be exceptional circumstances in which the Secretary of the Cabinet and if necessary the Prime Minister of the day should be consulted about the desirability of seeking the agreement of the former Prime Minister who was in charge of the Administration in question.

5) Before giving access to documents of a former Administration (whether of the same political party as or of a different political party from the Government of the day) to anybody not entitled to see them either in an official capacity or in accordance with these conventions (eg a Committee of Inquiry or a bona fide historian), the Prime Minister of the day (or the Secretary of the Cabinet acting on his or her authority) should seek the agreement of the Prime Minister concerned or, if he is not available, of the current leader of the political party concerned.

5. The main points of the conventions had been put on public record, and the principles underlying them explained, in the Prime Minister's reply to a written Question on 24 January 1980 (Official Report cols.305-7, copy at Annex A). The reply explains that the underlying objective and the main consideration in deciding cases is to protect Ministers from the political embarrassment that would arise if their successors saw documents that it was not appropriate for them to see. The confidentiality of officials' advice is also protected by the convention. The only general exceptions to the convention relate to material already in the public domain, certain documents in the field of foreign policy, and advice given by the Law Officers, which unlike other Ministerial papers, may generally be made available to succeeding administrations.

Accountability for past events

6. When actions taken under a previous Administration come into question, there may be two broad types of case:

(i) actions of purely historical significance; it is clear that Ministers of a current Administration cannot be accountable for the actions of their predecessors; where past events have no continuing relevance or operational significance to the Government of the day nobody is accountable to Parliament for them.

(ii) actions which continue to be of concern because, for example

(a) they caused some unremedied injustice;

(b) they reveal irregularity or impropriety about which action needs to be taken;

(c) they reveal some continuing defect in the arrangements for accountability to Parliament concerning the activities of persons in the public service of the Crown.

7. In the case at ii(a), Ministers very often deal with constituents' cases which have run on from a previous Administration and there is no objection to their doing so, provided that this can be done without revealing the attitudes of previous Ministers. Where the concern relates to the possibility of injustice arising from maladministration, the case may fall within the scope of the Parliamentary Commissioner for Administration's Act. His powers to call for papers are not subject to the conventions restricting access to the papers of a past administration and the practice has been to allow access to papers relevant to his investigations (falling short of Cabinet papers) which would normally be regarded as covered by the conventions. Where maladministration is not within the scope of the PCA's powers, because for example the injustice relates to civil service personnel matters, it may be possible, at the discretion of the Government of the day, to have the case investigated by an objective person of suitable authority and reputation appointed for the purpose. In accordance with the conventions on access to papers former Ministers would be consulted.

8. The Security Service Act 1989 provides for investigation of complaints by persons aggrieved by actions of the Security Service in relation to the person complaining or their property. The provisions do not apply to any complaint relating to anything

done before Schedule 1 of the Act came into force. They place members of the Security Service under a duty to disclose relevant documents to the Tribunal set up to investigate complaints. Such documents may in turn be disclosed to the Secretary of State in reports under Schedule 1, paragraph 5(1)(b). Another example where there may be some inroad into the conventions would be if relevant papers had to be disclosed in judicial proceedings. Applications by other parties for discovery of papers of a previous Administration would normally be resisted on grounds of public interest immunity but, if such a claim failed and the Government did not wish to abandon or settle the proceedings or the Government itself wished to disclose the papers, Ministers of the previous Administration would need to be consulted before the papers were disclosed.

9. Where the cause for concern is a breakdown, or perceived breakdown, in accountability to Parliament, the position is more complex. Where the breakdown concerns the improper or irregular use of public funds the special role of Accounting Officers is clearly relevant, and their responsibility to answer for any shortcomings is not confined to events under the present Administration. Similarly a civil servant would probably not decline to answer questions, for example from a Select Committee, about purely administrative acts under previous Administrations in which Ministers had taken no part. If Ministers had been involved it would not be open to a civil servant to discuss their role beyond saying that Ministers had authorised what had been done¹. But if the cause for concern is that Ministers of the former Administration were misled or not informed by officials, or that officials took improper action without Ministerial clearance, Ministers of the current Administration may be thought to have a responsibility for satisfying themselves and reporting to Parliament that the facts have been established, appropriate

¹ However, a special procedure applies where an Accounting Officer's advice on a matter of propriety or regularity of expenditure has been overruled by a Minister. In such a case the papers would be sent to the Comptroller and Auditor General; and if the Public Accounts Committee enquired into the matter, the Accounting Officer's advice and its overruling by the Minister would be disclosed to them.

disciplinary or other action has been taken, and that the working arrangements for the accountability of civil servants to Ministers are such as will prevent a recurrence.

10. In such cases the interaction of the doctrine of accountability and the conventions on access to papers of a former Administration is of particular interest. The Note by the Head of the Civil Service on the duties and responsibilities of civil servants in relation to Ministers, issued in December 1987 (the Armstrong Memorandum) sets out the constitutional position of civil servants in relation to Ministers. The Memorandum says that:

Ministers alone are accountable for the information given to Parliament;

Civil servants have no final authority to decide what information shall be made available to Parliament;

Civil servants should not deliberately withhold relevant information from their Minister;

The duty to make information available to the Minister is subject to the conventions limiting access by Ministers to the papers of previous Administrations.

11. Clearly if Ministers do not know what went on, and the convention prevents their finding out, it could be argued that they cannot investigate events of which they have no knowledge, or be accountable for their implications.

12. Effective Government in such circumstances depends on the following principles:

(i) Officials have a duty to provide present Ministers with all relevant information about departmental policy or past events subject to not disclosing the personal views or

comments of previous Ministers or the advice submitted directly to them. They are therefore under a duty to give Ministers information about events which may have been concealed from a past Administration, as there is no question of compromising former Ministers (unless to show a failure to control their Departments). In answering questions about such matters, Ministers must rely on the information given to them and should make clear that they are doing so.

(ii) If Ministers believe that there is sufficient evidence of an unsatisfactory state of affairs, it is open to them, after consultation with Ministers of the previous Administration, to appoint an objective person of suitable authority and stature to enquire into the events concerned, giving him necessary access to papers. The most extensive example of such an enquiry, by a Committee of Privy Counsellors, was the Falkland Islands Review.

13. There remains a final point concerning the possibility that Ministers of former and current Administrations may disagree about the course of action to be taken, or the extent of access to papers. If former Ministers, having been consulted, withhold their consent from an investigation it is conceivable that the current Government, in their capacity as advisers to the Crown as owner and custodian of papers not yet in the care of the public records office, could decide to go ahead with authorising an investigation without such consent.

14. If on the other hand the current Government decides against an inquiry despite representations from Ministers of a former Administration that there should be one, the Government can persist with its course while it commands a Parliamentary majority. The possibilities of review by the PCA might remain, subject to the facts and circumstances of the case. The possibility of Parliamentary review, by a Select Committee or by the Committee of Privileges, would be a matter for the Chairman of the Committee, or the Speaker, who can refer breaches of

privilege to the Committee on Privileges. The Government of the day is not necessarily bound to respond to calls for papers from Parliamentary Committees, and again the ultimate test in the event of refusal to concede access to papers is its ability to command a majority in the House.

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ACCESS BY MINISTERS TO DOCUMENTS OF A PREVIOUS ADMINISTRATION

2.18 In reply to a Written Question on 24 January 1980 (Official Report cols. 305-7) the Prime Minister said:

"The guidance to officials on the availability to Ministers of one Administration of the papers of a previous Administration is as follows:

"It is an established rule that after a General Election a new Administration does not have access to the papers of a previous Administration of a different political complexion. This rule applies especially to Cabinet papers.

"The general principle is clear. An incoming Minister should not have access to any minutes or documents written by a predecessor of a different Party other than those which were published or put in the public domain by that predecessor; nor should he be told - whether directly or by access to departmental papers which would tell him - exactly what his predecessor had said. Moreover, it may be equally important to withhold papers which show the advice given by officials to the previous Minister even though there may be no indication on them of his views.

"On the other hand, the national interest requires that there should be some continuity of policy. The arguments for continuity are stronger in certain fields than in others. Foreign policy is generally recognised as providing the classic example of a field in which continuity is important; but there are other fields in which some at least of the work of departments ought to continue on broadly the same lines as before. Under modern conditions it is not practicable for departments to make a completely fresh start with all their work.

"There is no neat formula which can be used to reconcile the general principle with the practical considerations which sometimes point in the opposite direction. Departments use their discretion in making the best reconciliation possible in each individual case. It is one thing to give an incoming Minister a general account of the basis of departmental policy in a particular field under the preceding Administration and another to allow him to examine the particular personal views of his predecessor on certain points. On personal matters such as these, especially when the political content is

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high, a department is expected to be very discreet about what outgoing Ministers have said or thought. On the other hand there may be no objection to showing an incoming Minister, e.g. a report which his predecessor saw but on which action remains to be taken, or documents which were made widely available outside Government. It may be possible to draw a distinction between documents recording the way in which decisions were reached and documents announcing these decisions. The guiding line must be to avoid embarrassment to previous Ministers.

"Nor can there be any standard action in those cases where departments feel that incoming Ministers have a need to know. Some papers, e.g. reports, may, if appropriate, be suitable for showing to new Ministers as they stand. In other cases, e.g. where the outgoing Minister was personally involved or expressed views on paper, the requirement can be met by preparing a summary of what was at issue and the action taken without showing incoming Ministers the actual documents which came before the previous Administration. In any instance (whether an individual case or not) where it is decided that papers of the previous Administration ought to be disclosed to a new Government difficulty may be avoided if, as a matter of courtesy, the former Minister is consulted before this is done.

"It is questionable whether in this context a distinction can be drawn between departmental papers about policy matters and those about individual cases. Individual case work often has a substantial political (if not policy) content, and the possibility of embarrassment could be just as real if a Minister were able to learn about the personal views of his predecessor on the handling of an individual case as it would be in matters of another kind. And, in any event, it is not easy in practice to draw a hard and fast line between case work, and policy. Although, therefore, it is a fair generalisation that papers on case work are less likely to cause difficulty than papers on policy, departments should nevertheless bear in mind the main objective - to protect Ministers from the political embarrassment that would arise if their successors saw documents that it was not appropriate for them to see".

GOVT MACH. Cuts Account

March 1990

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10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

SIR ROBIN BUTLER

THE GOVERNMENT'S ACCOUNTABILITY FOR EVENTS UNDER A PREVIOUS ADMINISTRATION

The Prime Minister has seen the draft minute attached to your minute of 12 March and your subsequent minute of 15 March. She agrees that the minute should now be circulated to Cabinet. She has suggested one amendment to the final lines of paragraph 2 which should read:

".... consult the Prime Minister of the previous administration and the previous Ministers who were in charge of the relevant Department. If they are not available the current leader of the political Party concerned should be consulted before authorising such access."

This is consistent with the practice followed in both the Wallace and De Lorean cases.

She has agreed that when you have circulated the minute she should reply along the lines you suggest, emphasising the presumption that Ministers should refuse to involve themselves in matters which occur under Administrations of a different Party. She would, however, like to add something about the exceptional circumstances under which current Ministers should become involved. I suggest:

X | "Nevertheless there could be some allegations, e.g. attacks on the integrity of the Security Services, Armed Forces or Civil Service, that are so scandalous that it must be the responsibility of the Government in power to see that they are investigated and, if false, denied."

AF

Andrew Turnbull

16 March 1990

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Prime Minister

You did not have a chance to read the Cabinet Office paper fully. So Robin has suggested that when it is formally submitted, you reply emphasising the presumption that Ministers do not involve themselves in matters which occurred under previous Administrations.

Ref. A090/704

MR TURNBULL

Yes.

Agree with your advertisement to Robin's paper & have suggested one other

Content to proceed in this way?

AT 15/3

The Government's Accountability for Events Under a Previous Administration

which is involved with current practice. not

Reflecting on the Prime Minister's discussion with me this afternoon, I think that the summary on the front of the paper attached to my minute of 12 March is a correct statement of the constitutional position. There is no way in which present Ministers can be held responsible for events under previous Administrations in which they did not hold office, and when such matters are raised they should always first consider whether they should decline to answer on those grounds. But in practice there will be from time to time matters raised in which they will need, and probably want, to get involved. Some allegations are so scandalous that it must be the responsibility of the Government in power to see that they are investigated and, if false, denied.

e.g. attacks on integrity of security services, Armed Forces or Civil Service.

2. However, I share the Prime Minister's view that, except when they have to take such action, Ministers should not get involved with matters for which they were not responsible. This point is prominently made in the second paragraph of the summary. I suggest that, when I formally submit the note, the Prime Minister might emphasise this point in her reply to her colleagues. I

--- attach a possible draft reply for the purpose.

R.B.

ROBIN BUTLER

15 March 1990

DRAFT MINUTE FROM MR TURNBULL TO SIR ROBIN BUTLER

The Government's Accountability for Events
Under a Previous Administration

The Prime Minister was grateful for the note which you submitted with your minute of ²⁰9 March. In particular, she agrees that Ministers should always ask themselves whether it is necessary to answer questions about events under previous Administrations of a different Party, for which they were not responsible. In general, the presumption should be that Ministers should refuse to involve themselves in such matters.

① →
2. I am copying this minute to the Private Secretaries to all members of the Cabinet and the Attorney General.

Ref. AO90/660

MR TURNBULL

The Government's Accountability for Events under
Previous Administrations

attached - Ref Here

At Cabinet on 1 February (CC(90) 4th Meeting, Item 1), I was asked to advise on the accountability of the current administration for events which took place under previous administrations.

- 2. I attach a minute, which has been prepared with the help with Machinery of Government Division and the Treasury Solicitor. If the Prime Minister is content, I shall submit it formally, copying to other members of the Cabinet.

R.R.B.

ROBIN BUTLER

12 March 1990

The Government's Accountability for Events Under Previous Administrations

Summary

1. Present Ministers are not responsible to Parliament for events which took place under a previous Administration. However, questions about such events are from time to time addressed to them, and if action is required, whether by way of inquiry or to rectify things done wrong and prevent their recurrence, only the present Government can take such action.

2. Present Ministers are in a special difficulty in dealing with such questions when they relate to events under a previous Administration of a different Party because (subject to narrow exceptions) they do not by convention have access to the relevant papers. So they may reasonably first consider whether they should decline requests to give an account, or initiate action, in respect of events for which they are not responsible. If, however, they conclude in the circumstances of a particular case that it is impossible or inappropriate for them to stand aside, they have to rely on the advice of officials who have access to the papers and they should make clear that they are doing so. If Ministers take the view that they should receive advice from a third party who should be given access to the papers of a previous Administration (of whatever Party), the Government should consult the Prime Minister of the previous Administration, or if they ^{are} not available the current leader of the political Party concerned, ^{should be consulted} before authorising such access.

3. Civil servants act on behalf of present Ministers and similarly cannot be required to justify actions taken or approved by Ministers of a previous Administration. They may however be required to account for and justify actions taken by civil servants and they have access to the relevant papers in doing so. However, beyond saying, when appropriate, that actions were taken on Ministerial instructions or with their approval, civil

*+ the previous
Minister
who was in
charge of the
relevant dept.*

servants are not free (subject to the special procedure described in the footnote to paragraph 9 below) to reveal or discuss the role of previous Ministers.

Access by Ministers to documents of a previous administration

4. In July 1982, following the establishment of a Committee of Privy Counsellors to conduct the Falkland Islands Review, the Prime Minister approved the following summary of the conventions governing access to documents of a former administration:

- 1) Documents of a former Administration are the property of the Crown. The grant of access to them for any person not entitled in an official capacity to see them requires the agreement of the Government of the day until they are released as public records.
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- 4) Ministers of a current Administration may normally see documents of a former Administration of the same political party, whether or not they saw those documents as members of that Administration, provided that the requirement to see them arises in the course of their Ministerial duties. There may, however, be exceptional circumstances in which the Secretary of the Cabinet and if necessary the Prime Minister of the day should be consulted about the desirability of seeking the agreement of the former Prime Minister who was in charge of the Administration in question.

5) Before giving access to documents of a former Administration (whether of the same political party as or of a different political party from the Government of the day) to anybody not entitled to see them either in an official capacity or in accordance with these conventions (eg a Committee of Inquiry or a bona fide historian), the Prime Minister of the day (or the Secretary of the Cabinet acting on his or her authority) should seek the agreement of the Prime Minister concerned or, if he is not available, of the current leader of the political party concerned.

5. The main points of the conventions had been put on public record, and the principles underlying them explained, in the Prime Minister's reply to a written Question on 24 January 1980 (Official Report cols.305-7, copy at Annex A). The reply explains that the underlying objective and the main consideration in deciding cases is to protect Ministers from the political embarrassment that would arise if their successors saw documents that it was not appropriate for them to see. The confidentiality of officials' advice is also protected by the convention. The only general exceptions to the convention relate to material already in the public domain, certain documents in the field of foreign policy, and advice given by the Law Officers, which unlike other Ministerial papers, may generally be made available to succeeding administrations.

Accountability for past events

6. When actions taken under a previous Administration come into question, there may be two broad types of case:

(i) actions of purely historical significance; it is clear that Ministers of a current Administration cannot be accountable for the actions of their predecessors; where past events have no continuing relevance or operational significance to the Government of the day nobody is accountable to Parliament for them.

(ii) actions which continue to be of concern because, for example

(a) they caused some unremedied injustice;

(b) they reveal irregularity or impropriety about which action needs to be taken;

(c) they reveal some continuing defect in the arrangements for accountability to Parliament concerning the activities of persons in the public service of the Crown.

7. In the case at ii(a), Ministers very often deal with constituents' cases which have run on from a previous Administration and there is no objection to their doing so, provided that this can be done without revealing the attitudes of previous Ministers. Where the concern relates to the possibility of injustice arising from maladministration, the case may fall within the scope of the Parliamentary Commissioner for Administration's Act. His powers to call for papers are not subject to the conventions restricting access to the papers of a past administration and the practice has been to allow access to papers relevant to his investigations (falling short of Cabinet papers) which would normally be regarded as covered by the conventions. Where maladministration is not within the scope of the PCA's powers, because for example the injustice relates to civil service personnel matters, it may be possible, at the discretion of the Government of the day, to have the case investigated by an objective person of suitable authority and reputation appointed for the purpose. In accordance with the conventions on access to papers former Ministers would be consulted.

8. The Security Service Act 1989 provides for investigation of complaints by persons aggrieved by actions of the Security Service in relation to the person complaining or their property. The provisions do not apply to any complaint relating to anything

done before Schedule 1 of the Act came into force. They place members of the Security Service under a duty to disclose relevant documents to the Tribunal set up to investigate complaints. Such documents may in turn be disclosed to the Secretary of State in reports under Schedule 1, paragraph 5(1)(b). Another example where there may be some inroad into the conventions would be if relevant papers had to be disclosed in judicial proceedings. Applications by other parties for discovery of papers of a previous Administration would normally be resisted on grounds of public interest immunity but, if such a claim failed or the Government itself wished to disclose the papers, Ministers of the previous Administration would need to be consulted before the papers were disclosed.

9. Where the cause for concern is a breakdown, or perceived breakdown, in accountability to Parliament, the position is more complex. Where the breakdown concerns the improper or irregular use of public funds the special role of Accounting Officers is clearly relevant, and their responsibility to answer for any shortcomings is not confined to events under the present Administration. Similarly a civil servant would probably not decline to answer questions, for example from a Select Committee, about purely administrative acts under previous Administrations in which Ministers had taken no part. If Ministers had been involved it would not be open to a civil servant to discuss their role beyond saying that Ministers had authorised what had been done¹. But if the cause for concern is that Ministers of the former Administration were misled or not informed by officials, or that officials took improper action without Ministerial clearance, Ministers of the current Administration may be thought to have a responsibility for satisfying themselves and reporting to Parliament that the facts have been established, appropriate

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disciplinary or other action has been taken, and that the working arrangements for the accountability of civil servants to Ministers are such as will prevent a recurrence.

10. In such cases the interaction of the doctrine of accountability and the conventions on access to papers of a former Administration is of particular interest. The Note by the Head of the Civil Service on the duties and responsibilities of civil servants in relation to Ministers, issued in December 1987 (the Armstrong Memorandum) sets out the constitutional position of civil servants in relation to Ministers. The Memorandum says that:

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11. Clearly if Ministers do not know what went on, and the convention prevents their finding out, it could be argued that they cannot investigate events of which they have no knowledge, or be accountable for their implications.

12. Effective Government in such circumstances depends on the following principles:

(i) Officials have a duty to provide present Ministers with all relevant information about departmental policy or past events subject to not disclosing the personal views or

comments of previous Ministers or the advice submitted directly to them. They are therefore under a duty to give Ministers information about events which may have been concealed from a past Administration, as there is no question of compromising former Ministers (unless to show a failure to control their Departments). In answering questions about such matters, Ministers must rely on the information given to them and should make clear that they are doing so.

(ii) If Ministers believe that there is sufficient evidence of an unsatisfactory state of affairs, it is open to them, after consultation with Ministers of the previous Administration, to appoint an objective person of suitable authority and stature to enquire into the events concerned, giving him necessary access to papers. The most extensive example of such an enquiry, by a Committee of Privy Counsellors, was the Falkland Islands Review.

13. There remains a final point concerning the possibility that Ministers of former and current Administrations may disagree about the course of action to be taken, or the extent of access to papers. If former Ministers, having been consulted, withhold their consent from an investigation it is conceivable that the current Government, in their capacity as advisers to the Crown as owner and custodian of papers not yet in the care of the public records office, could decide to go ahead with authorising an investigation without such consent.

14. If on the other hand the current Government decides against an inquiry despite representations from Ministers of a former Administration that there should be one, the Government can persist with its course while it commands a Parliamentary majority. The possibilities of review by the PCA might remain, subject to the facts and circumstances of the case. The possibility of Parliamentary review, by a Select Committee or by the Committee of Privileges, would be a matter for the Chairman of the Committee, or the Speaker, who can refer breaches of

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privilege to the Committee on Privileges. The Government of the day is not necessarily bound to respond to calls for papers from Parliamentary Committees, and again the ultimate test in the event of refusal to concede access to papers is its ability to command a majority in the House.

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ACCESS BY MINISTERS TO DOCUMENTS OF A PREVIOUS ADMINISTRATION

2.18 In reply to a Written Question on 24 January 1980 (Official Report cols. 305-7) the Prime Minister said:

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"It is an established rule that after a General Election a new Administration does not have access to the papers of a previous Administration of a different political complexion. This rule applies especially to Cabinet papers.

"The general principle is clear. An incoming Minister should not have access to any minutes or documents written by a predecessor of a different Party other than those which were published or put in the public domain by that predecessor; nor should he be told - whether directly or by access to departmental papers which would tell him - exactly what his predecessor had said. Moreover, it may be equally important to withhold papers which show the advice given by officials to the previous Minister even though there may be no indication on them of his views.

"On the other hand, the national interest requires that there should be some continuity of policy. The arguments for continuity are stronger in certain fields than in others. Foreign policy is generally recognised as providing the classic example of a field in which continuity is important; but there are other fields in which some at least of the work of departments ought to continue on broadly the same lines as before. Under modern conditions it is not practicable for departments to make a completely fresh start with all their work.

"There is no neat formula which can be used to reconcile the general principle with the practical considerations which sometimes point in the opposite direction. Departments use their discretion in making the best reconciliation possible in each individual case. It is one thing to give an incoming Minister a general account of the basis of departmental policy in a particular field under the preceding Administration and another to allow him to examine the particular personal views of his predecessor on certain points. On personal matters such as these, especially when the political content is

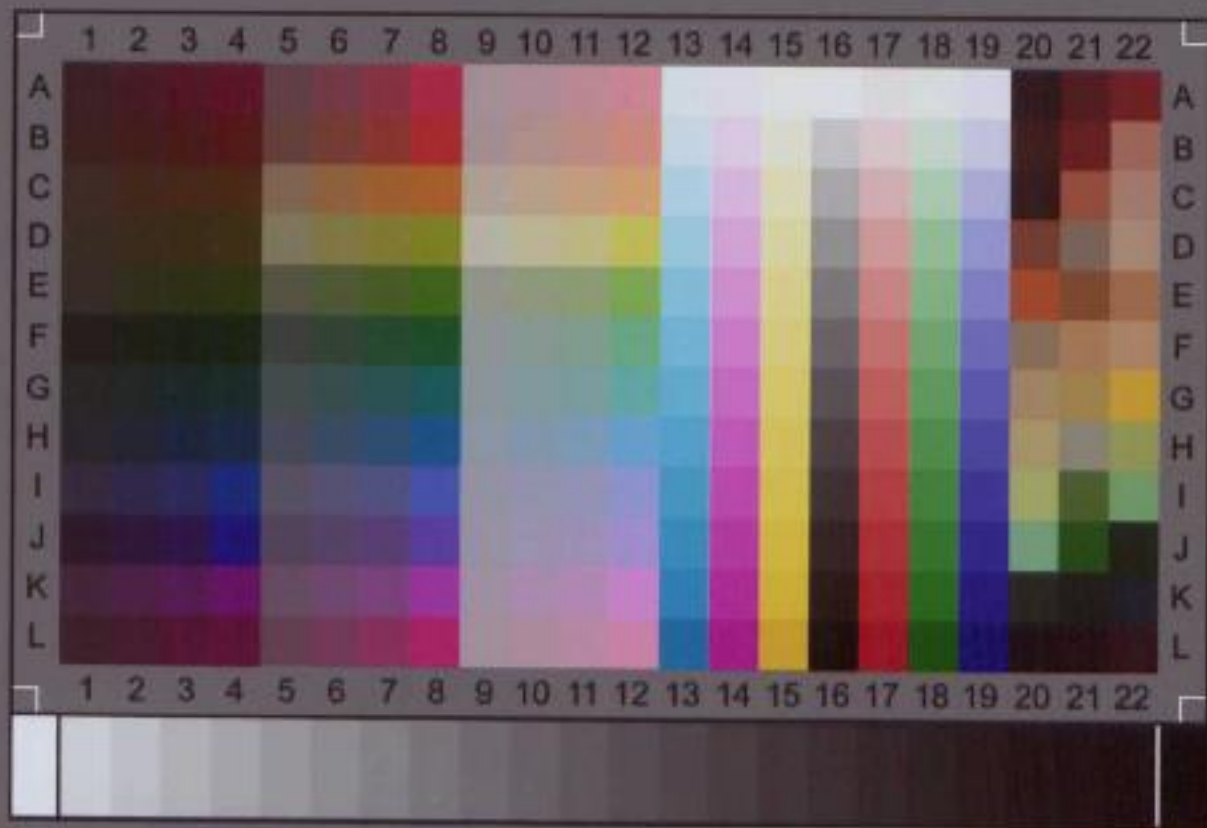
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high, a department is expected to be very discreet about what outgoing Ministers have said or thought. On the other hand there may be no objection to showing an incoming Minister, e.g. a report which his predecessor saw but on which action remains to be taken, or documents which were made widely available outside Government. It may be possible to draw a distinction between documents recording the way in which decisions were reached and documents announcing these decisions. The guiding line must be to avoid embarrassment to previous Ministers.

"Nor can there be any standard action in those cases where departments feel that incoming Ministers have a need to know. Some papers, e.g. reports, may, if appropriate, be suitable for showing to new Ministers as they stand. In other cases, e.g. where the outgoing Minister was personally involved or expressed views on paper, the requirement can be met by preparing a summary of what was at issue and the action taken without showing incoming Ministers the actual documents which came before the previous Administration. In any instance (whether an individual case or not) where it is decided that papers of the previous Administration ought to be disclosed to a new Government difficulty may be avoided if, as a matter of courtesy, the former Minister is consulted before this is done.

"It is questionable whether in this context a distinction can be drawn between departmental papers about policy matters and those about individual cases. Individual case work often has a substantial political (if not policy) content, and the possibility of embarrassment could be just as real if a Minister were able to learn about the personal views of his predecessor on the handling of an individual case as it would be in matters of another kind. And, in any event, it is not easy in practice to draw a hard and fast line between case work, and policy. Although, therefore, it is a fair generalisation that papers on case work are less likely to cause difficulty than papers on policy, departments should nevertheless bear in mind the main objective - to protect Ministers from the political embarrassment that would arise if their successors saw documents that it was not appropriate for them to see".



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