

CONFIDENTIAL

PRIME MINISTER

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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
this stage? *Yes MS 8/vi*

HOUSE OF COMMONS PROCEDURE

(very much agreed)

[attached]

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

