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CABINET

DEPARTMENTAL SELECT COMMITTEES

Memorandum by the Chancellor of the Duchy of Lancaster

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.
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.



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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 <sup>3</sup>~~A~~) 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 <sup>4</sup>~~A~~) 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;

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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.

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Privy Council Office

14 January 1980



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?

Scottish Affairs Committee

3. 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.

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

Employment Committee

4. 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.

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

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



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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.

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