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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. 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.

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. 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 on the latter, the Committee could 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 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.

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 proposals (paragraph 2(b)) would have far-reaching consequences. In no circumstances should we agree to empower Select Committees to "order" the attendance of Ministers or the production of Departmental papers. We do however have a choice in the matter of debate on any refusal to produce papers. We could offer a new procedure under which the Government would be required to provide time for a debate, not at the instance of the Select Committee alone, but in response to widespread demand in the House as a whole - as evidenced, for example, by a Motion signed by a stated number of Members or by a vote (see Annex B). On the other hand, the Procedure Committee have not produced any evidence of general difficulty or dissatisfaction with the way in which the present powers of Select Committees have operated in practice, although they have shown that they may be in some respects unclear or anomalous. We could therefore take the line that the case for a new power to force debate has not been established, and that the matter could be looked at again after the new structure has been in operation for some time. I recommend that we adopt this course of no change.

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 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. 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.

N St J S

Privy Council Office

11 June 1979

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

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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.

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, 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.

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 on the appointment and conduct of the Judiciary and confidential communications between them and the Lord Chancellor on judicial matters; 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 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 the House as a whole. A procedure could be devised which would require the Government to provide time for a debate, not at the instance of the Select Committee alone, but in response, for example, to a motion signed by a stated number of Members or to a vote.

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 or to produce papers (and in the case of attendance by a Peer the Lords must be moved to give leave). Furthermore, although the Procedure Committee themselves recognised that the argument in the event of a refusal would be essentially political and that recourse to contempt proceedings would be inappropriate, the term "order" is usually associated with contempt proceedings and should be avoided on that account. 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.