



Ref. A02639

PRIME MINISTER

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House of Commons Procedure

(C(80) 41)

BACKGROUND

The Procedure Committee submitted a major report in 1978. No decisions were taken on its recommendations before the Election. The Conservative Election Manifesto expressed sympathy for the Committee's approach in their proposals for improving the way the House of Commons legislates and scrutinises public spending and the work of Government Departments, and The Queen's Speech promised the House an opportunity "to discuss and amend their procedures". The Chancellor of the Duchy of Lancaster's paper covers the outstanding recommendations not already dealt with in debates in June 1979 (when the House accepted proposals for Departmental Select Committees) and October 1979 (sessions and sittings). He has promised the House a debate before the Recess.

2. The Procedure Committee set themselves the general aim of improving the scrutiny of legislation and delegated legislation. Mr. Pym (then Shadow Leader of the House) and Mr. Atkins (then Shadow Chief Whip) were among those who stressed the need to do so. The recommendations on public Bills and subordinate and European legislation raise again, and perhaps more acutely than did the recommendations on Departmental Select Committees, the question of the balance of power between Government and Parliament. The Chancellor of the Duchy's paper recognises the need for the Government to retain control of the business of the House and he proposes that for this reason most of the Procedure Committee's detailed recommendations (set out in the Annexes) must be rejected. His paper concentrates on a few major recommendations which he proposes should be tried as an experiment or accepted with modifications. He believes that these changes would make the House's scrutiny more effective



without seriously affecting the Government's control of business. He sees his proposals very much as a "package"; and he fears that, unless he is able to offer a package of this kind, which he believes the main proponents of change would accept, the House on a free vote will insist on procedural changes that would not be acceptable to Ministers. His consultations with influential Members interested in procedure, including Mr. Du Cann, and Mr. Rees and Mr. Cunningham on behalf of the Opposition, reinforce this view.

3. The Chief Whip does not support the proposals on the scrutiny of public Bills and statutory instruments and is more sanguine of the chances of persuading the House not to make further procedural changes at present. One of his arguments is that to put more work of various kinds to Standing Committees would increase the Government's difficulties in manning the Committees and maintaining a majority on them. You have expressed concern at the increasing burden on backbenchers as well as Ministers, and the Procedure Committee's recommendations raise, by inference though not explicitly, the questions of "full-time" MPs without interests outside the House.

4. The Cabinet will need to assess the likely reaction of the House to any package of proposed changes as well as to consider the merits of individual proposals. As regards the major proposals:

(a) Public Bill Committees

The Procedure Committee's recommendation for three evidence-taking sittings at the outset of the Committee Stage of most Bills was itself a compromise proposal. It may have the faults of a compromise and would delay the progress of a Bill without, in practice, providing enough time for a proper investigation of the policy background. It has nevertheless the support of over 100 MPs, from both sides of the House, who have signed Early Day Motion 784, and the Chancellor of the Duchy argues that the Government must respond at least to the extent of a limited experiment. Apart from the extra time required for the procedure in Public Bill Committee, the work of that Committee would be bound to

lead to more work and longer time in Committee Stage proper. The new procedure would be something of a gift to an Opposition set upon disrupting the Government's programme. The Government would need to try to maintain its majorities in Public Bill Committees; this would add to the demands on backbenchers.

(b) Subordinate Legislation

The Procedure Committee (and the Chancellor of the Duchy) appear on strong ground in regarding as indefensible the present situation in which the Standing Committee set up to consider a statutory instrument cannot vote to approve or reject it. The Government can ignore a vote in the Committee without having to bring the matter to the floor of the House unless the instrument is one made under the affirmative procedure. On the other hand, the detailed proposals in the Chancellor of the Duchy's paper (as distinct from those of the Procedure Committee) do not give an automatic right to a debate on the floor. The recommendation seems to be acceptable, provided that the Government does not mind being defeated upstairs from time to time, and is prepared either to ignore such defeats or reverse them on the floor of the House. If on the other hand the Government was not prepared to risk defeat upstairs, it would have to make sure of its majority in the Standing Committee, and whip if necessary: another addition to the demands upon backbenchers.

(c) European Legislation

The detailed proposals have been agreed by the members of L and OD(E). The Law Officers are content with them and with the proposed declaratory resolution, of which the text is at Annex C. It is intended to safeguard Ministerial freedom in negotiation, and the formula is likely to satisfy the Scrutiny Committee and Government supporters, though not the Opposition. The proposed response to recommendation 28 would enable European legislation to be discussed in a Standing Committee (which is at present moribund) and would save time after 10.00 on the floor of the House. Again, however, it will add to the amount of Parliamentary time required for European legislation, and to the demands upon backbenchers.

(d) Departmental Select Committees

The decisions taken last June covered the recommendations on the structure of Departmental Select Committees, but left outstanding other recommendations on, for example, the time to be given to debates on their reports. The Chancellor of the Duchy recognises that to initiate a debate on these matters risks reopening the question of the setting up of Sub-Committees. He would like, however, to have authority to deal with the outstanding recommendations as and when opportunity offers. That seems to many to be premature. The Government can hardly avoid a full debate on the work of the new Committees next Session because of the demand from the Liaison Committee for more Sub-Committees, and that is surely the time to deal with these issues. The alternative and preferable course, therefore, is to defer consideration of the matters listed in Annex E until then.

(e) Financial Control

The proposal to set up a new Procedure Committee next Session to study the House's control of supply has the support of Treasury Ministers. While it would be a major exercise, and the exact outcome cannot be predicted, it accords with the Cabinet's concern about cash limits, and the demand by some Government backbenchers that supplementary estimates should not be passed "on the nod".

HANDLING

5. After the Chancellor of the Duchy of Lancaster has introduced his paper you will want to ask the Chief Whip to give his assessment of the likely Parliamentary reaction to the proposals as a whole. The other Ministers (former Leaders of the House or Chief Whips) who may have general comments include the Home Secretary, the Secretary of State for Employment, the Secretary of State for Defence and the Secretary of State for Northern Ireland.

6. You will not want the Cabinet to get immersed in procedural detail. (Comments on the Annexes might best be made in writing.) It may, however, be convenient to take the recommendations in paragraphs 3-11 of the paper in turn.



(a) Experiment with Public Bill Committees

The first question is whether there should be an experiment next Session. By what criteria would the result be judged? What Bills would be chosen? Would any experiment be the thin end of a very large wedge of Parliamentary time? The Chief Whip will want to comment on the effect on the legislative programme. The Secretary of State for Northern Ireland is cited by the Procedure Committee as supporting their recommendation. If the Cabinet do not favour an experiment, they will need to consider the line the Chancellor of the Duchy should be invited to take in debate. Would it be possible to ask the House to take note of recommendation 5 and promise a Government view at a later date? Or will that result in the House insisting on the general introduction of the new procedure?

(b) Subordinate Legislation

The Chief Whip will wish to express his reservations about the proposals (paragraph 7 of the paper). Is it unreasonable to expect the Whips to maintain a Government majority in the relevant Committees?

(c) European Legislation

You will want the Lord Privy Seal to confirm that he is content with what is proposed. The Minister of Agriculture, Fisheries and Food is also much concerned with the House's scrutiny of such legislation.

(d) Departmental Select Committees

The Chancellor of the Duchy will want to explain why he is seeking Cabinet agreement at this stage to the proposals in Annex E. How injurious would deferment of this subject be?

(e) Financial Control

You will want to confirm that the Chancellor of the Exchequer is content with the proposal in paragraph 11 of the paper. The Secretary of State for Defence and the Secretary of State for Social Services represent large spending Departments, and may well want to speak.

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7. Having looked at the contents of the package, the Cabinet may want to consider again its total attractiveness (or otherwise) to the House, and the line to be taken in the debate (provisionally scheduled for 28th or 29th July).

CONCLUSION

8. If the Cabinet seems to be ready to come to conclusions, you might guide them:

- (a) to agree to the proposed experiment with public bill committees or to reject it and invite the Chancellor of the Duchy to set out the various arguments in his speech without expressing any Government view;
- (b) to agree to the proposed declaratory resolution embodying the present undertaking about the approval of European Communities legislation;
- (c) to agree to the proposals in paragraphs 7 and 9 (and Annexes B and D) on subordinate and European legislation;
- (d) to defer consideration of Annex E relating to departmental select committees;
- (e) to agree in principle to the establishment next Session of a new Procedure Committee with the terms of reference in paragraph 11; and then:
- (f) invite the Chancellor of the Duchy to be guided by the decisions of the Cabinet and the points made in discussion in tabling motions for a debate before the Summer Recess and in his contribution to it.

9. If on the other hand it seems that the Cabinet is not ready to come to conclusions, you will want to find a way of coming back to the subject later. One possibility might be to propose that a small group of Ministers, under the chairmanship of the Home Secretary, should go through the proposals and make recommendations. Other members of the group might include the Chancellor of the Duchy, the Chief Secretary, the Lord Privy Seal and the Chief Whip: and perhaps the Secretary of State for Defence and the Secretary of State for Northern Ireland as former Chief Whips, though that would risk making the group rather unbalanced.

RA

(Robert Armstrong)

16th July, 1980