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PRIME MINISTER

Role of Comptroller and Auditor General:  
Parliamentary Control of Expenditure (Reform) Bill  
(C(82)42 and 44)

BACKGROUND

The First Special Report of the Public Accounts Committee (PAC) for the 1980-81 Session recommended, among other things, that the Comptroller and Auditor General (C & AG) should be appointed on the recommendation of the House of Commons, not on that of the Prime Minister; that the staff of the Exchequer and Audit Department should become servants of the House; that the C & AG should have access to the books of the nationalised industries, public corporations, and all companies and other bodies in receipt of public funds; and that he should take control of the District Audit Service (DAS).

2. The Government has effectively responded to the last of these recommendations by establishing the Audit Commission for local government, and providing that the C & AG is to have access to documents relating to certain studies by the Commission and is to report to Parliament on matters arising from them.

3. The Government has resisted the substance of the remaining recommendations. When the Ministerial Committee on Economic Strategy discussed the issues in February (E(82)4th Meeting, Item 1) it agreed that the C & AG should not be made responsible to the House of Commons; and that he should not have access to the books of the nationalised industries or companies receiving financial assistance, though certain limited concessions might be made. The Chancellor of the Exchequer, in consultation with the Lord President of the Council and the Chief Whip, was authorised to hold further discussions with Mr. du Cann MP and (separately and subsequently) with Mr. Joel Barnett MP, Chairman of the PAC, on this basis.

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4. On the instructions of E Committee I circulated a memorandum (E(82) 34) setting out the constitutional case for preserving the independence of the C & AG from directions by the House of Commons or its Committees and for ensuring that its responsibilities, and PAC enquiries, did not extend beyond the range of Ministerial responsibilities. These were proposals to which Ministers attached fundamental importance.

5. Mr. Norman St John-Stevas MP has drawn second place in the ballot for Private Members' Bills and has given notice that he intends to promote legislation giving effect to the PAC recommendations mentioned in paragraph 1 above (other than that relating to the DAS). Second Reading is down for 28th January. The business managers and the Chancellor of the Exchequer believe that he may well carry the House and Committee, even against Government objections. A previous Early Day Motion supporting the PAC recommendations attracted nearly 300 signatures.

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6. The Chancellor of the Exchequer therefore recommends, in C(82) 42, that the Government should try to reach an accommodation with Mr. St John-Stevas. Its main features would be as follows:

- (a) The C & AG would remain an office-holder under the Crown, and would not be subject to direction from the House of Commons or its Committees. He would become the head of a new National Audit Office (NAO). The staff of the NAO would cease to be civil servants; its budget would be controlled by the House of Commons Commission or a similar body.
- (b) The C & AG would have access to the books of the nationalised industries, but only for the purpose of investigating questions of efficiency and value for money. Nationalised industry investigations would be undertaken by a separate command within the NAO, with a commercial orientation. The programme of investigations would be the subject of consultation between the C & AG and the Government. To avoid duplication, investigations by the Monopolies and Mergers Commission (MMC) under Section 11 of the Competition Act 1980 would cease.





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(c) The C & AG should have access to the books of companies in which the Government has a controlling interest. Further access should be refused if possible; but if concessions have to be made, they should go no further than allowing access to the books of companies receiving substantial public assistance through grants, loans or guarantees.

If a satisfactory deal could be struck with Mr. St John-Stevas, the Government should offer assistance with drafting.

7. At least some nationalised industry sponsoring Ministers see serious difficulty in the Chancellor's proposals. The Secretary of State for Trade has circulated a memorandum (C(82) 44) arguing against allowing the C & AG access to the books of the nationalised industries, mainly on the grounds that it will inhibit commercial attitudes and deter potential recruits to the Boards of the industries. He also suggests that the programme of privatisation could be put at serious risk. The Secretary of State for Industry has written (letter of 13th December) making similar points; the Secretary of State for Transport (letter of 14th December) has also expressed concern.

MAIN ISSUES

8. Ministers will presumably continue to take the view that in principle the PAC recommendations are misguided. It is however no longer a question of what the Government would prefer, but of how to secure the least damaging outcome, bearing in mind that Mr. St John-Stevas has secured a high place in the ballot and commands a good deal of support in the House. The main issues are therefore:

- (i) will the Bill command a majority in the House and in Committee?
- (ii) if so, should the Government continue to resist, or try to compromise?
- (iii) is it possible to prevent a Bill passing by procedural means?
- (iv) what might the terms of a compromise be? What are the features which Ministers would regard as essential?

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Depending on the outcome of the discussion of these issues, it may also be useful to consider:

- (v) whether enough is being done to present the arguments against the proposals?
- (vi) what consultations should there be with outside interests affected by the Bill?
- (vii) what further work needs to be done within Government?

Will the Bill Command a Majority?

9. The business managers appear to take the view that Mr. St John-Stevas can probably secure a majority. You will, however, wish to probe carefully the strength and grounds of this view. Signing an Early Day Motion is one thing: voting against the Whip another. Even if the Bill gets Second Reading, could the Government carry whatever amendments it thought necessary in Committee?

10. Alternatively, might the Government be able to persuade the House to vote down Mr. St John-Stevas's Bill by offering to present its own legislation? No doubt this legislation would have to make some concessions to Mr. St John-Stevas and the views of his Bill represents; but it would be more under the Government's control; and there would be more time to work out some of the difficult issues that are bound to arise under any attempt at compromise.

11. There is also the possibility of seeking to ensure by procedural means that whatever Bill emerges from the consultation process fails to reach the Statute book.

Should the Government resist or try to compromise?

12. If the Bill is likely to be carried against Government objection, the arguments for trying to get it into as acceptable a form as possible are clear and strong. But there are arguments on the other side which you may wish to explore.

- (i) Even a compromise on the lines suggested by the Chancellor of the Exchequer will be bitterly resented by the nationalised industries and others. The Government may be in an easier position if it can say that it resisted the proposals but was overborne





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than if it is a party to the legislation. On the other hand the passage of legislation on a matter of such importance in the face of the Government's declared opposition would be bad for the Government's general credibility.

- (ii) A satisfactory compromise may be unattainable. The Government could then find that its ability to resist had been undermined by concessions made in the (abortive) negotiations. Much will depend on the judgment of whether a satisfactory compromise is likely to be attained.

#### The Terms of a Compromise

13. Ministers will presumably support the Chancellor's wish to ensure that the C & AG is not subject to direction by the House or its Committees. If he were so subject, there would be a risk that he would be directed to launch a large number of investigations into matters of ephemeral or party political interest; and if, as would be likely, he was pushed towards the area of policy formulation, there would be serious potential problems of access to departmental papers. The detailed proposals in Annex A to C(82)42 are designed to avoid these difficulties.

14. The other point which the Cabinet is likely to regard as vital is that the C & AG's investigations should go no wider than Ministerial responsibility. If the C & AG's freedom from direction can be maintained, that, and his own good sense, should help to some extent. The proposal that the C & AG's programme of investigation into the nationalised industries should be the subject of consultation with the Government will also help. But the fact remains that the C & AG will report to the House of Commons and will not be able to ignore its views. The thrust of the PAC recommendations is, in part, to make nationalised industries directly responsible to the House of Commons, instead of or as well as to Ministers. Some members of the Cabinet may suggest that the compromise proposed by the Chancellor goes too far in this direction. It is not clear however that there is a more satisfactory but nevertheless realistic basis for compromise.

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15. It may also be suggested that more clarity is needed regarding the investigation of private sector companies. It is, for example, proposed that British Aerospace (BAe) should not be subject to investigation. But suppose that the company received launch aid for a new civil aircraft. If the logic of the PAC recommendations is accepted, it is hard to see how the case for access to BAe's books could be resisted, at least in respect of the particular project. There is nothing in the Chancellor's proposals which appears to prevent this access then being extended to all BAe's activities.

16. No doubt many other detailed examples of potential difficulties could be produced. It is hardly possible to foresee them all, let alone to resolve the resulting problems, before the text of the Bill is presented to Parliament (presumably around 21st January). The normal solution would be to take appropriate order-making powers. But is this likely to be acceptable to Mr. St John-Stevas?

17. Other issues which may be raised in discussion are as follows:

- (i) Is it agreed that investigations of the nationalised industries by the MMC (except as for cases of monopoly in the private sector) should cease? It seems right; investigation by both the MMC and the C & AG would lay a very heavy burden on the industries.
- (ii) What are the implications for the privatisation programme? Presumably British Telecom, in particular, would be open to investigation by the C & AG under the Chancellor's proposed compromise for as long as the Government retained a majority shareholding. Is this likely to deter private investors? If so, can anything be done about it?
- (iii) Is the fall-back position in Annex D to C(82)42 acceptable? In particular, what does the Chancellor have in mind by the phrase "companies which are in receipt of substantial selective assistance"?





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### Drafting Assistance

18. If a compromise can be reached with Mr St John-Stevas, it would be natural for the Government to offer drafting assistance. You will wish to ask the Lord President whether Parliamentary Counsel can accept the additional burden.

### Further Consultations

19. Paragraph 10 of Annex B to C(82)42 suggests that there should be consultation with the Nationalised Industries Chairmen's Group. Three questions arise:

- (i) Are there any others who should be consulted (for example, the chairmen of other public sector organisations whose books would be subject, for the first time, to scrutiny by the C & AG)?
- (ii) Who should conduct the consultations? The Chancellor suggests sponsoring Ministers; but there is a case for Treasury Ministers doing the job. They have conducted the negotiations with Mr. St John-Stevas and others; and the issues are matters of national financial policy and institutions, not specific to individual industries.
- (iii) When should they take place - before or after a deal is struck (if it can be struck) with Mr. St John-Stevas? Before or after the presentation of his Bill?

### Further Work

20. If the Bill goes ahead, whether on the basis of a compromise or otherwise, there will presumably be many consequential issues. For example:

- (i) It is not clear whether the foundation of the claim that the C & AG should have access to the books of the nationalised industries is that they receive loans from the National Loans Fund. If it were, the industries would be likely to redouble their pressure to be allowed to borrow elsewhere, and the Government would have to consider whether this should





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be permitted. The basis of the claim may however be wider, for example the fact of public ownership of the industries and the implied financial backing which flows from that. Much will depend on exactly how the legislation is framed.

- (ii) How are investigations by the C & AG to be followed up (paragraph 9 of Annex B to C(82)42)? Is it clear that it will be for sponsor Ministers to answer to Parliament for follow-up action?
- (iii) What increases, if any, in departmental staff numbers will be needed to cope with the new situation?

21. Such questions cannot be taken far until the likely shape of any legislation is clearer. But you may wish to invite the Chancellor of the Exchequer to arrange for them to be studied in due course and to report his conclusions to the appropriate Committee or Sub-Committee.

HANDLING

22. You will wish to ask the Chancellor of the Exchequer to introduce his memorandum. Given the fundamental importance of the Parliamentary situation for the whole discussion, you might then ask the Lord President of the Council and the Chief Whip for their assessment. You will also wish to invite comments from the Secretary of State for Trade in support of his paper. Other Ministers with sponsoring responsibilities for the nationalised industries and assistance to private sector companies (Secretaries of State for Environment, Scotland, Industry, Transport and Energy may wish to contribute.

CONCLUSIONS

23. You will wish the Cabinet to reach conclusions on the following:

- (i) Should the Government resist Mr. St John-Stevas's Bill or seek a compromise?
- (ii) If the Government seeks a compromise should it be on the lines proposed in C(82) 42? What are the points which the Cabinet regards as essential?





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- (iii) Should drafting assistance be offered?
- (iv) What outside interests should be consulted?  
When? By whom?
- (v) What arrangements should be made for follow-up work when the likely shape of any legislation is clearer?

*Robert Armstrong*

Approved by  
Robert Armstrong  
and signed in his absence.

15th December 1982