



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

1 August 1984

Dear Leon,

Following discussion in Cabinet on 19 July of the release to the Select Committee on Trade and Industry of the British Shipbuilders Corporate Plan and other documents, I was invited to review the rules and conventions governing the production of documents of Government Departments and their associated public bodies to Departmental select committees (CC(84)27th Conclusions, Item 1).

I attach a short aide memoire which summarises the procedural position with regard to the formal powers of these select committees to send for "persons, papers and records (PPR)", especially those held by Government Departments, and their "associated public bodies", including the nationalised industries.

As will be noted from the aide memoire, the powers of a select committee are more direct in relation to documents held by associated public bodies than they are with regard to papers held by a Government Department headed by a Secretary of State, in that only in the former case can the committee order their production without the need for an Address, which would involve the Floor of the House.

A further principal source of potential disagreement between Ministers and select committees, which the recent dispute over the British Shipbuilders Corporate Plan has highlighted, is that whereas the categories of other normally withheld papers, such as those listed at paragraph 4 ii (a) to (e) of the Aide Memoire, are reasonably clear cut, there is no accepted definition of the range of paper constituting "advice to Ministers" or "internal working documents" (paragraph 4 iii of the Aide Memoire) which Departments or associated public bodies can by convention be expected to withhold from select committees, and not be pressed to produce without the authority of the House itself.

The Rt Hon Leon Brittan QC MP
Home Secretary

As far as the position of documents held by the nationalised industries and other associated bodies is concerned, our aim must clearly be to ensure that, as far as possible, the disclosure of information does not prejudice efficient management. I can see, prima facie, no clear reason why the disclosure of "policy" documents should, procedural differences apart, be any different from that in the case of documents held by Government Departments. Indeed, insofar as they are more likely to deal with matters of commercial sensitivity, there is perhaps a case for the disclosure rules being tigher.

I would, however, propose, as a starting point for further consideration, that we might seek to establish through the Liaison Committee an understanding with select committees that "policy" documents held in the custody of nationalised industries and other associated public bodies, and in that of Government Departments, should be regarded as being on a common footing for the purpose of forming a judgement on the propriety of their disclosure to Departmental select committees.

On the broader issue of how far it may be possible to arrive at a workable and more precise definition, acceptable to the House, of "internal working documents" and "advice to Ministers" which would not normally be disclosed to Departmental select committees, I should be grateful for the views of colleagues and any suggestions they may have as to the way in which any such definitions might be framed, or the conditions of disclosure "in confidence" tightened up. As a further aspect of this they may wish to review the extent to which such information has been made available in recent years to Departmental select committees under the existing practice of individual Departments, and their associated public bodies. This may bear upon our effective room for manoeuvre.

In the light of colleagues' views and suggestions I would then hope to carry this review further with a view to reporting to Cabinet in October before the Select Committees resume.

I am copying this to Cabinet colleagues, the Minister for the Arts and Sir Robert Armstrong.

Yours
John Biffen

JOHN BIFFEN

AIDE MEMOIRE

1. The terms of reference of the Departmental select committees provide (House of Commons Standing Order 99) that they shall examine the "expenditure, administration and policy" of the principal Government Departments and their "associated public bodies".
2. For this purpose these committees have, like most other select committees of the House, the traditional power to "send for persons, papers and records" (PPR).
3. The general procedural position with regard to the exercise of these powers, particularly in respect of PPR, is set out in the Memorandum of Guidance to Ministers on Departmental Select Committees (C(P)(80)2, especially paragraphs 14 to 17 and the Annex). A more detailed analysis, by the then Clerk of the House, is at Appendix "C" to the First Report from the Select Committee on Procedure, 1977-78.
4. The powers of PPR are unqualified in the Standing Orders of the House. In practice, however, the House of Commons has conventionally acknowledged certain limitations on their exercise. The most important of these are:-

- i. Papers held by a Secretary of State

A select committee has no power to send for any papers which, if required by the House itself, would be sought by Address. In practice this means that a select committee is not capable of taking the formal step of ordering a Secretary of State to produce papers.

Where papers or records are held by a Minister who is not

a Secretary of State (eg the Chancellor of the Exchequer) a select committee with powers of PPR could make an Order for their production, although there is no record of this having been done. The Clerk's memorandum expresses the view that it is doubtful whether a committee has the power to order a civil servant to produce papers, since these are not in Civil Service custody, but in that of Ministers.

ii. Specific categories of information not normally disclosed to select committees

By accepted convention evidence is not given to select committees on the following matters:

- (a) Matters of national security;
- (b) Information relating to the private affairs of individuals or individual bodies, where the information has been given on a confidential basis;
- (c) Specific cases where the Minister has a quasi-judicial or appellate function;
- (d) Matters which are the subject of sensitive negotiation with Governments or other bodies;
- (e) The details of legislative proposals that have not yet been divulged to the House.

These categories were first summarised in 1967 in a letter by the then Leader of the House (Mr Crossman) to the chairmen of certain select committees, including the Select Committee on the Nationalised Industries.

iii. Non-disclosure of "advice to Ministers"

Besides these specific categories it is recognised that Ministers also have a general responsibility to judge, where necessary, whether the disclosure of any particular official information or document to a select committee, whether under conditions of confidentiality or otherwise, would be in the public interest. Within this responsibility it has been, for example, the normal policy to withhold from select committees, unless there are strong reasons to the contrary, the "internal working documents" of Government Departments, particularly those which could be broadly construed as "advice to Ministers".

In the Government's reply to the First Report of the Liaison Committee (Session 1982-83) on the Select Committee System it is recognised that such judgements may give rise to differences of opinion between Ministers and select committees as to whether it is in the public interest for particular information to be disclosed. In such instances, and if the difference cannot otherwise be resolved, it rests, in the last resort, with the House of Commons to decide whether or not to support the Government's judgement. A Government undertaking has been given to seek to provide time for a debate if there should be evidence of widespread general concern in the House regarding an alleged Ministerial refusal to disclose information to a select committee.

5. The Position of the Nationalised Industries

The procedural position with regard to a select committee's powers

to send for papers in the custody of a nationalised industry or other "associated public bodies" differs in certain respects from that in the case of papers held in the custody of a Government Department. In particular, the limitation in respect of papers held in the custody of a Secretary of State does not apply, and a committee has the power to issue an order for the production of papers held in the custody, for example, of the Chairman of British Railways. In his memorandum to the 1977-78 Procedure Committee the Clerk of the House stated -

"41. The case of officers of Nationalised Industries is different from that of civil servants, since the former are not servants of the Crown, and the institutions are formally independent of government, except insofar as the power of giving ministerial directions of one sort or another is concerned; Ministers also have the power to require information under statute from the industries. It is clear therefore that the full powers of PPR can be exercised by Select Committees in regard to Nationalised Industries."

But the Clerk then went on to raise the possibility that "there may well be cases where a select committee would consider it more appropriate to address themselves to the Minister, who is accessible on the Floor of the House, rather than the officer (of the nationalised industry concerned)".

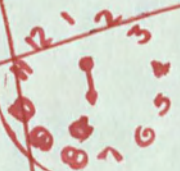
6. Until 1979 there was a separate Select Committee on the Nationalised Industries. Under Standing Order 99(4) there is an unused power whereby a sub-committee, with its membership drawn from several of the Departmental select committees, could be established to consider "any matter affecting two or more nationalised industries".

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Shipbuilding

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QUEEN ANNE'S GATE LONDON SW1H 9AT

7 September 1984

no p.m. sub 7/9

2 Jm,

Your letter of 1 August sought comments from colleagues about this review of rules and conventions governing the production of documents to Departmental Select Committees by Government Departments and their associated public bodies.

It would certainly seem sensible for "policy" documents of nationalised industries and other associated public bodies to be treated in the same way as those of Government Departments and I agree that this would be a good starting point to take to the Liaison Committee for consideration.

As you know, the Liaison Committee and the Select Committees have accepted, albeit reluctantly, that in the case of advice to Ministers, details of consultation between Ministers, and inter-departmental exchanges, disclosure will usually be refused. Our experience so far of the Select Committees has not suggested that these categories of information need to be more precisely defined or that they would be inadequate, taken with the specific categories set out in paragraph 4(ii) of the aide memoire to your letter, to protect information that ought not to be disclosed.

I recognise, however, that this experience may not be representative of Select Committees as a whole. Home Office associated public bodies are not commercial and are unlikely to have policy papers of interest to Select Committees that should not be disclosed. The Home Affairs Committee has not yet pressed for written evidence under the present "in confidence" procedure (though they may do so in connection with their forthcoming inquiry into police Special Branches) and they have taken oral evidence under the procedure on only one occasion (from a Chief Constable).

I am copying this letter to the recipients of yours.

Jm
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The Rt Hon John Biffen, M.P.

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