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Secretary of State for Trade and Industry

5 September 1984

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The Rt Hon John Biffen MP
Lord Privy Seal
Privy Council Office
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John.

RULES AND CONVENTIONS GOVERNING THE RELEASE OF DOCUMENTS TO
SELECT COMMITTEES

Thank you for sending me a copy of your letter of 1 August to Leon Brittan. I have also seen Alick Buchanan-Smith's letter of 22 August and No 10's letter of 3 August.

2 I do not underestimate the difficulty of trying to persuade Select Committees to accept a review or closer definition of their powers to send for persons, papers and records; particularly as we will be asking them to give up access to documents which they have managed in the past to obtain, albeit after a struggle. But the fact that an unsatisfactory situation, which has largely been tackled on an ad hoc basis, has existed to date does not seem to me a good reason for allowing it to continue. The problem which arose recently over the demand for British Shipbuilders' Corporate Plan concerns me because it disclosed advice to Ministers. If similar demands were made of the British Steel Corporation (they have been pre-empted for the present by the need for their plan to be revised after the end of the miners' strike) it could be politically damaging and embarrassing. I therefore very much welcome your proposed initiative.

3 The fact that the powers of Select Committees to "send for persons, papers and records" are unqualified in the Standing Orders of the House and have become governed by working conventions which are only loosely defined and somewhat illogical does give the Government good reason to review the situation and to seek a new understanding with the Committees.

4 I agree with your proposal that all policy papers in the custody of nationalised industries and other public bodies

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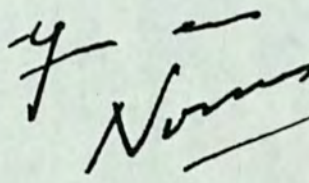
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should be treated in the same way as those of Government Departments and released to Select Committees only at the discretion of the Secretary of State. I suggest that "policy papers" should be defined as "any document prepared or provided with a view to a decision by a Minister" and that the term should be taken to include internal working papers pertinent to them. I think that it is important also to ensure that companies where the Government is the major shareholder (such as BL and Rolls Royce) have at least the same level of protection as the nationalised industries would have under your proposals.

5 As far as I am aware, Committees have respected commercially confidential material but there could be advantage in reiterating this understanding in a review of the conventions.

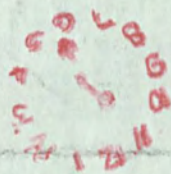
6 The satisfactory resolution of the present difficulties will also need the co-operation of the nationalised industry Chairmen. We do not have the power to direct the Chairmen on what to do with their papers. I suggest therefore that the proposals should first be put on a Chairmen Group before any approach is made strictly confidential basis to the Nationalised Industries: to the Liaison Committee - I think they would welcome the proposals since their position would be clarified. It could moreover be helpful to tell the Liaison Committee at the appropriate moment that we have their support.

7 Copies of this letter go to Cabinet colleagues, the Minister for the Arts and Sir Robert Armstrong.


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Secretary of State for Trade and Industry

7 September 1984

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Charles Marshall Esq
PS/Lord Privy Seal
Lord Privy Seal's Office
Whitehall SW1

*AMS
6/9*

Dear Charles,

RULES AND CONVENTIONS GOVERNING THE RELEASE OF DOCUMENTS TO
SELECT COMMITTEES

I regret that my Secretary of State's letter of 5 September to the Lord Privy Seal contained errors in paragraph 6. I should be grateful if you and others to whom this letter is copied would note that the text of paragraph 6 of the letter should have read as follows:

"The satisfactory resolution of present difficulties will also need the co-operation of the nationalised industry chairmen. We do not have the power to direct the Chairmen on what to do with their papers. I suggest, therefore, that the proposals should first be put on a strictly confidential basis to the Nationalised Industries Chairmen Group before any approach is made to the Liaison Committee. I think the Nationalised Industries Chairmen would welcome the proposals since their position would be clarified. It could moreover be helpful to tell the Liaison Committee at the appropriate moment that we have the support of the Nationalised Industry Chairmen".

I am copying this letter to the Private Secretaries to Cabinet Ministers, the Minister for the Arts and to Sir Robert Armstrong.

Yours es,
Andrew Lansley

ANDREW LANSLEY
Private Secretary

Parliament: Procedure Pt 6.

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NBPm
Jr.
22 August 1984

Dear John.

In your letter of 1 August to Leon Brittan you discussed your review of the rules and conventions governing the production of documents to Departmental Select Committees by Government Departments and their associated public bodies.

I believe there is a strong case for reiterating the convention that documents constituting "advice to Ministers" are not normally released to select committees nor otherwise published. Peter Walker has recently had to resist a number of requests in PQs for copies of correspondence with nationalised industry Chairmen. An understanding with the select committees of the kind you suggest treating certain nationalised industry documents (or parts of them) on the same basis as "advice to Ministers" would be a helpful reinforcement of the existing conventions about disclosure. Indeed, could it not be argued that private communications between Secretaries of State and associated bodies should not be disclosed since their disclosure would, in effect, be circumvention of the Address procedure which applies to the papers of Secretaries of State?

Before any approach is made to the select committees you may feel it would be worthwhile to consult the nationalised industries on their policies on handling select committee requests. The energy NIs follow Government policy of making available as much information as possible. They have sometimes withheld commercially confidential information though at other times it has been provided, but under protection. This has worked well. In cases of difficulty where the industries were unwilling to release all the information sought my Department has been consulted and an acceptable compromise solution worked out.

Some years ago some guidelines were issued to NIs on this subject. It is not clear if they are still extant and in any event they are doubtless now in need of revision. This might be an appropriate way of preparing for your suggested approach to the select committee.

You also suggest a more precise definition of "internal working documents" and "advice to Ministers". I see some attraction in this, in spite of the possible danger of some loss of flexibility. It seems to me that, almost by definition, "internal working documents" can be seen as communications of a preparatory kind between Civil

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Servants which should not be disclosed because they have not been endorsed by Ministers. Similarly, it must be evident that submissions to Ministers or ultimately intended for them, as well as work undertaken specifically at the request of Ministers, must constitute "advice to Ministers". You may feel that these elaborations do help. Between them they cover a lot of ground, including the area of some recent "leaks" and some recent areas of argument with Committees. Incidentally, in offering further guidance we must avoid weakening the currently accepted safeguard for commercially confidential information. This has been fully honoured by committees on a number of occasions, and may not necessarily fall within any definition of "advice to Ministers".

As requested my officials have reviewed my Department's practice in making such information available to select committees. The need to withhold information has arisen on only four occasions in recent years. Only two outright refusals have been necessary; one concerning an internal document prepared for Ministers and another involving our quasi-judicial role in a planning consent. My officials are preparing a detailed list of recent cases in response to MPO's recent request designed to update their precedent list.

Copies of this go to Cabinet colleagues, the Minister for the Arts and Sir Robert Armstrong.

Yours etc.
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ALICK BUCHANAN-SMITH

Procedure of H/C: PARLIAMENT Pt 6.

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CCM/O



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The Rt Hon John Biffen MP
Lord Privy Seal
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4 September 1984

Dear John

Thank you for sending me a copy of your letter of 1 August to Leon Brittan about the disclosure of information to Select Committees.

I agree that you should seek an understanding with the Select Committees through the Liaison Committee that "policy" documents held in the custody of both Government Departments and nationalised industries or other associated public bodies should be treated as being on a common footing as far as disclosure is concerned. Before we do so however I think we will need to give further thought to what documents should be included in that category. It may need to include only those documents which nationalised industries are required or asked to prepare by the Government and those which they prepare and send in support of proposals to Government Departments. Candid communication between Departments and Boards is important to maintaining successful working relations and a risk that papers of this sort might be requisitioned by a Parliamentary Committee could jeopardise it. Policy documents which are purely for internal use by a nationalised industry could on the other hand reasonably be left to be treated by Select Committees in the same way as

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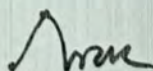
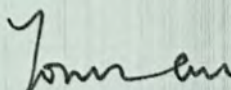
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the documents of any other private organisation. An understanding restricted to the former class of documents could be presented as seeking consistency of treatment of documents which might be sought from either Departments or nationalised industries and defended against criticism that it was a move to restrict the availability of information.

An important part of an understanding about nationalised industry documents would be that when a Select Committee wanted a document which appeared to the nationalised industry concerned to fall within the scope of the understanding they should be able to refer the Committee to the Secretary of State for a decision. Otherwise the understanding might not achieve the consistency of treatment which we are seeking.

I hope that your discussion with the Liaison Committee will lead to an understanding rather than to "rules", because documents and their sensitivity vary in ways which defy codification. For this reason I would also prefer, so far as release of documents by Departments is concerned, that we do not seek tighter definitions of "internal working documents" and "advice to Ministers". These broad criteria allow a useful degree of flexibility, providing a context in which to judge individual cases rather than specifications which might prove difficult by not fitting particular cases. Experience suggests that where there are good working relations with a Committee, flexibility is a benefit not an obstacle.

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



NICHOLAS RIDLEY

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Parliament : H.O.C. Proceeding. Pt 6 .