

Prime Minister



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The House Committee has rejected the Lord Privy Seal proposals for ensuring that documents are released only with the authority of Departmental Ministers.

This minute records the steps now being taken by the LPS to find a way out of the impasse.

PRIME MINISTER

RELEASE OF DOCUMENTS TO SELECT COMMITTEES

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In my minute to you of 31 October 1984, I reported the outcome of consultations with colleagues regarding the remit to me from Cabinet on 19 July [CC(84) 27th Conclusions Item 1] to review the rules and conditions governing the production of documents of Government Departments and their associated public bodies to Departmental Select Committees. Essentially, the Standing Orders of the House give Select Committees a procedurally unconditioned right to send for persons, papers and records. The exercise of this power has, however, always been tempered by certain conventions, particularly with regard to the types of information not normally disclosed to Select Committees. With regard to potential conflicts over requests for disclosure, Francis Pym gave a pledge as Leader of the House in January 1981 that he would provide time for the House of Commons to express a view where there was "widespread general concern in the House regarding an alleged Ministerial refusal to disclose information to a Select Committee".

The review followed a dispute with the Select Committee on Trade and Industry over their request for the disclosure of the British Shipbuilders' Corporate Plan. Arising from that experience, the general view of colleagues was that our aim in future should be to get working documents of nationalised industries, and other associated public bodies, constituting "advice to Ministers", treated in the same way as Departmental documents in the same category. The agreement of the appropriate Minister would therefore be required before any such documents were disclosed. You indicated on 1 November your general agreement with this approach.

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As proposed, I have since had several meetings with Terence Higgins, as Chairman of the Liaison Committee of Select Committee Chairmen, with a view to seeing how far an agreement could be reached on these lines, and whether the Committee would be prepared to use its influence with individual Select Committees accordingly.

The three proposals we have been discussing are set out in detail in my letter of 11 February (copy attached). The first is aimed at dissuading Select Committees from obtaining via a nationalised industry, or other 'associated body', a Departmental document which the Minister does not consider should be disclosed. The second is a minor point confirming that requests for documents will be dealt with in the same way by all Departments, whether or not they are headed by a Secretary of State. The third is the main proposal, seeking agreement that any request by a Departmental Select Committee for the disclosure of a document in the possession of a Nationalised Industry or other 'associated public body', and constituting 'advice to Ministers', should, in the first instance be addressed to the Departmental Minister concerned. This, if accepted, would have ensured that requests from Select Committees for the disclosure of 'advice to Ministers' were judged on the same criteria, whether the document concerned was in the possession of a Government Department or of a Nationalised Industry.

The Liaison Committee (see Terence Higgins' attached reply of 9 May) have agreed the second, and least important point in my letter, but have flatly rejected the other two. In the light of this unpromising reply, and the earlier discussion, I do not think there is any realistic prospect of the Committee changing its mind. It would therefore seem that our objective can only be met either by a change in Standing Orders, if this could be achieved, or, by instructing Chairmen of Nationalised Industries, when necessary, not to disclose particular documents and being prepared to take individual cases to the Floor if the Committees press the issue. I consider both of these alternatives to be fraught with difficulties.

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NEXT STEPS

The Liaison Committee will be publishing shortly a further report on the work of Select Committees. This may provide an opportunity to take stock of our relations with Select Committees more generally, and to consider how best to proceed. One possibility might be to refer to the Procedure Committee, under Peter Emery's chairmanship, a number of matters relating to Select Committees, which could cover this question of the disclosure by Nationalised Industries of 'advice to Ministers'; as well as the procedure for appointing the membership of the Departmental Select Committees, which has also been causing problems. In this context, therefore, I have agreed with the Chief Whip that he should take soundings amongst the Conservative Committee Chairmen and senior backbenchers to see if we can find a way forward. I will minute you again in the light of developments.

I am copying this minute to Cabinet colleagues, the Chief Whip, the Paymaster General and Sir Robert Armstrong.

W J B

JOHN BIFFEN

22 May 1985



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

11 February 1985

Dear Terence,

1. Following our discussion about the disclosure of documents to Select Committees I promised to let you have a note of how I saw the problems which we then discussed.
2. The first of the Government's proposals concerns the situation which could arise in the case of a Departmental document which is held in the possession both of a Government Department and also of a nationalised industry, or other 'associated body'. It is the Government's view, which I hope the Liaison Committee would share, that in these circumstances it should be for the Minister in charge of the Department concerned to decide whether or not the document should be disclosed to the Select Committee. It would not be appropriate for the Chairman or other official of the nationalised industry, or other 'associated body', to be asked by the Select Committee for a copy of the same document. The second and very minor issue concerns the slightly different powers of a Select Committee to call for papers in the case of a document in the possession of a Department headed by a Secretary of State and one in the possession of a Department headed by other Ministers. It might be helpful to confirm that the Government does not intend to take any advantage of the more rigorous procedures for documents held by Departments headed by a Secretary of State when questions of disclosure may arise.
3. The third point relates to the question of the disclosure of documents in the possession of a nationalised industry or other 'associated body' which are held to constitute "advice to Ministers".
4. As I see it, the position is as follows:
 - (i) The terms of reference of the Departmental Select Committees provide that they shall examine the "expenditure, administration and policy" of the principal Government Departments and their 'associated public bodies'.
 - (ii) For this purpose these Committees have the traditional power to "send for persons, papers and records" (PPR).

Rt Hon Terence Higgins MP
House of Commons

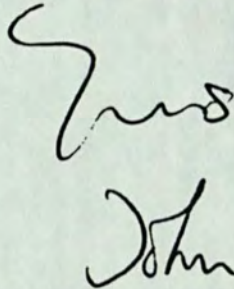
(iii) These powers are unqualified in Standing Orders. In principle, however, the House has acknowledged certain limitations on their exercise. In particular, evidence is not normally given to Select Committees in the case of certain specific kinds of information: for example, information on matters which are the subject of sensitive negotiations with other Governments or other bodies, or details of legislative proposals that have not yet been divulged to the House.

(iv) Besides these specific categories, however, Ministers also have a general responsibility to consider, as necessary, whether, in a particular case, the disclosure of other official information or documents would be in the public interest. In this respect the House has recognised, for example, that normal Departmental practice is not to disclose documents that are regarded as "advice to Ministers".

5. 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 the exercise of Ministerial judgement in these cases may give rise to differences of opinion between Ministers and Select Committees. If such differences cannot be otherwise resolved, and there is evidence of widespread general concern in the House, a Government undertaking has been given to seek to provide time for a debate on the Floor of the House.
6. A Select Committee's powers in relation to papers in the custody of a nationalised industry or other "associated public bodies" differ from that in the case of papers held in the custody of a Government Department, since, in the former case, the PPR powers of a Select Committee are more direct. But the Government take the view that the criteria for considering whether to withhold the disclosure of a document constituting "advice to Ministers" is in the public interest, are in practice often similar, whether the document is held by a nationalised industry or by a Government Department. The Government are also concerned that the public disclosure of such 'advice' in the case of documents held by the nationalised industries might in certain instances prejudice their effective management.
7. In this connection the Clerk of the House suggested in paragraph 41 of his memorandum of evidence to the 1977-78 Committee that, in exercising their powers of PPR, "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".
8. What the Government is asking you and the Liaison Committee to consider, therefore, is for Select Committees to follow the Clerk's suggestion in the case of nationalised industry documents that might be regarded as "advice to Ministers".
9. In this way requests for the disclosure to Select Committees of documents of a similar kind could from the outset be considered at what Ministers

10. regard as the proper point ie. by the Minister concerned. I fully realise that "advice to Ministers" lacks definition. I doubt whether, in this context, this can be avoided.
11. I do, however, give the assurance that the scope of this suggestion is not meant to cover simply factual information; and that any decision to withhold disclosure on these grounds would be taken at Ministerial level. I also recognise that circumstances could arise where it would only be possible to resolve differences between a Minister and a Select Committee over the disclosure of documents on the Floor of the House.

I should be grateful to know whether the Liaison Committee felt able to support the three suggestions outlined in this letter. On the third, that relating to nationalised industry documents, we should of course need to consult the nationalised industry Chairmen before any change of practice were introduced.

A handwritten signature in cursive script, appearing to read "John Biffen".

JOHN BIFFEN

From: Rt Hon Terence Higgins MP



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HOUSE OF COMMONS
LONDON SW1A 0AA

9th May 1985

Dear John,

The Liaison Committee has now considered your letter regarding the rights of select committees to send for documents from nationalised industries.

As far as your second point is concerned, the Liaison Committee agrees that with the passage of time the distinction between Departments headed by a Secretary of State and those headed by a Minister should no longer affect the working of the committees and they are grateful for your confirmation that the Government does not intend to take any advantage of the more rigorous procedure for documents held by a Secretary of State when questions of disclosure may arise.

They are not however prepared to accept your first suggestion that the Minister in charge of the Department concerned should decide whether or not a document in the possession of both the Government and a nationalised industry or other "associated body" should be disclosed to a select committee. The Liaison Committee are strongly of the view that both the original Nationalised Industries Committee and the present departmentally related committees concerned with nationalised industries have exercised their powers reasonably. They consider that if a nationalised industry is in possession of a document it will be related to its operations, and therefore if a relevant select committee wishes to see it in the course of carrying out their responsibilities to Parliament they have the right to do so, without ministerial agreement.

The Liaison Committee is also strongly opposed to your third suggestion that "advice to ministers" from nationalised industries or other "associated bodies" should only be released to a select committee if the minister concerned agrees. The Liaison Committee agrees with you about the difficulty of defining "advice to ministers" but considers that a

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situation in which the minister himself decides what is and is not within the scope of this expression, and then could withhold such information, would be a wholly unacceptable limitation of the traditional rights of select committees and their ability to fulfill their duties to Parliament.

As ever.

James

CHAIRMAN
Liaison Committee

Rt Hon John Biffen MP
Lord Privy Seal and Leader of the House of Commons
House of Commons
London
SW1

Parliament: Hoc Procedure Pt 6

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11 MAY 1987



10 DOWNING STREET

From the Private Secretary

28 May 1985

The Prime Minister has now seen the Lord Privy Seal's minute of 22 May about the release of documents to Select Committees. She has noted the steps which he and the Chief Whip are taking to find a way out of the current impasse with the Liaison Committee.

Timothy Flesher

David Morris, Esq.,
Lord Privy Seal's Office.

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