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CABINET OFFICE
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20 JAN 1986
FILING INSTRUCTIONS
FILE No.

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CCIBU

MR WICKS

20.1

cc Mr Stark

PS/ Secretary of State for Trade and Industry
 Mr M K O'Shea, Department of Trade and Industry
 PS/ Secretary of State for Defence
 Mr D R Marsh, Ministry of Defence
 Mr R A C Hewes, MPO

WESTLAND: PRESENTATION OF THE GOVERNMENT'S CASE TO
SELECT COMMITTEES.

Ministry of Defence officials are appearing before the Select Committee on Defence on 21 and 22 January. The session in the afternoon of 21 January is to be devoted to the facts about the armed forces' procurement and use of helicopters, and that on January 22 to questions about European collaboration. A factual memorandum about helicopters currently in use by HM Forces has been cleared through the Cabinet Office machinery.

2. The Select Committee on Defence already have copies of the 1978 Declaration of Principles governing cooperation on helicopter programmes, together with the provisional agreement between the 4 Defence Ministers concluded by Mr Heseltine on 13 December. Both of these were given to the Committee before Christmas by Mr Heseltine. Ministry of Defence officials would now like to complete the documentation by giving the Committee the document incorporating the recommendation by the National Armament Directors which was the subject of the E(A) discussion on 9 December. For the most part, the NAD's recommendation text is exactly the same as that of the Ministers' provisional agreement; the most significant difference is in the final paragraph, where the Ministers' text is somewhat weaker than that of the NAD's. The NAD's text says 'that the needs

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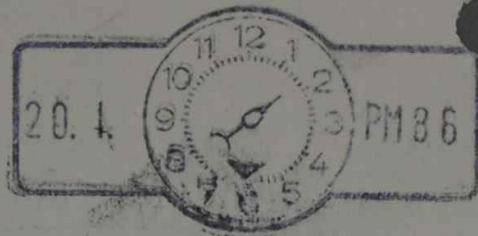
of their forces within the 3 classes... should be covered solely in the future by helicopters designed and built in Europe'; the Ministers' text says that 'they agreed in re-affirming their commitment to the 1978 Declaration of Principles that the needs of their forces within the 3 classes... should be covered solely in the future by helicopters designed and built in a cost effective way in Europe.' Ministry of Defence officials have undertaken to clear with us the text of an opening statement to be made to the Defence Committee about all these texts by Sir David Perry (Head of Defence Equipment Collaboration) at the Committee's session on 22 January; against this background I propose that MOD should be authorised to release the text of the NAD's recommendation to the Defence Committee on 21 January.

3. Ministry of Defence officials are also clearing other briefing material for use before the Select Committee through the Cabinet Office machinery.

4. Separate guidance has been provided by MPO about the responses to be made by Ministers and officials to requests by the Select Committee for documents bearing on Westland. This advice has been cleared with the Office of the Secretary of the Cabinet, and circulated to DTI and MOD. This advice makes clear that Ministers and Officials should refuse to provide Cabinet and Cabinet Committee documents, documents incorporating advice given by officials to Ministers or relating to discussions between Ministers, and documents incorporating material given in confidence to the Government. It also makes clear that the previous leak of a document provides no ground for giving that document to a Select Committee, if it falls into one of the restricted categories. The material I have provided separately for use at Question time on 21 January is fully consistent with the advice promulgated to Departments.

JW

A J WIGGINS
Cabinet Office.
20 January 1986



[The text in this section is extremely faint and illegible. It appears to be a multi-paragraph document.]

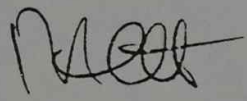
MR WIGGINS,
SECRETARIAT

cc PS/Sir Robert Armstrong
Mr Bailey, Treasury Solicitor ✓
Mr Townley, Secretariat
Mrs Brown
Miss Dickinson
Mr O'Shea, DTI
Mr Marsh, MOD

WESTLAND: DISCLOSURE OF DOCUMENTS TO SELECT COMMITTEES

1. Mr Bailey has made two comments on the note attached to my minute of 20 January which I should bring to your attention.
2. The first line of paragraph 12 is no longer strictly correct. In the latest (20th) edition of Erskine May the text has changed and May now quotes the Clerk to the Procedure Committee's Memorandum as the authoritative statement on "persons, papers and records". Paragraph 12 should therefore begin

"The Clerk to the Procedure Committee noted in his memorandum that"
3. Secondly, the note makes no reference to advice from the Law Officers. For the avoidance of doubt the rule remains that advice given by the Law Officers must not be disclosed nor should any reference be made to such advice being sought or given without the express consent of the Law Officer.


R A C HEWES

21 January 1986.

MR WIGGINS,
SECRETARIAT

- cc PS/Sir Robert Armstrong
- Mr Bailey, Treasury Solicitor ✓
- Mr Townley, Secretariat
- Mrs Brown, MG
- Miss Dickinson, MG

WESTLAND DISCLOSURE OF DOCUMENTS TO SELECT COMMITTEES

1. Following our meeting on Friday afternoon, I am attaching papers which can be circulated to MOD and DTI once you (and, if appropriate, Sir Robert Armstrong) are satisfied they meet the requirements and fit with arrangements already agreed by Cabinet for clearing future statements etc. concerning the Westland affair.

2. The documents are drafted on the implicit assumption that all the officials concerned will be prepared to accept the guidance of the Minister in charge of the Department as to what information they should provide to a Select Committee and how they should respond to questions from that Committee. They have not been drafted to cover a situation in which an official might be seeking an opportunity to provide a Select Committee with information against the wishes of his Minister. We have explored that area in some depth with Treasury Solicitor in the wake of Ponting and have found no easy answers. MG is still working on this following a meeting with Mr Bailey late last year. If you believe guidance to cover that situation may be needed in this context, I would appreciate notice of this urgently.

3. I hope I have stayed on the right side of contempt of the House in advising how officials and Ministers should respond to requests for evidence etc. Mr Bailey will, however, advise if he feels I have overstepped the mark.

RAC

R A C HEWES

20 January 1986.

21. 1. 86

*JRB phoned Hawes.
 Paper follows guidance but
 query para. 12 & latest
 edition of Estline may.
 Doubtful whether our proposed
 line will satisfy Select Ctee
 in this case.*

MR WIGGINS,
SECRETARIAT

cc PS/Sir Robert Armstrong
Mr Townley, Secretariat
Mrs Brown, MG
Miss Dickinson, MG

WESTLAND: DISCLOSURE OF DOCUMENTS TO SELECT COMMITTEES

1. At our meeting on Friday afternoon, it was agreed that I would send you a note covering the various disclosure issues that might arise in the course of inquiries by the Defence and the Trade and Industry Select Committees into various aspects of the Westland affair.
2. As requested, I have drafted this note in terms that make it suitable for circulation on an unclassified basis to anyone in Departments that may be involved in these inquiries. I have also tried to set it out in a way that highlights the words that officials may want to use in responding to requests.
3. The note does not refer expressly to Westland. But it should nevertheless be regarded as applicable only in that context. For other purposes officials should rely on the Memorandum GEN.80/38. A copy of this is attached. There is also a Memorandum of Guidance to Ministers. Since this is a Cabinet Paper (C(P)(80)2) I have not referred to it in the note, but MOD and DTI need to be made aware of it so that their Ministers can remind themselves of its contents.
4. The note also needs to be read in the general context of developments in the Westland affair to date. There has already been more than usual disclosure (by Mr Brittan and other Ministers still in the Cabinet as well as by Mr Heseltine) about the process (e.g. particular Cabinet Committees) by which Government decisions in this affair were reached, about confidential correspondence between Ministers (including references, with dates, to letters the text of which remains so far undisclosed) and about views expressed to, by and between Ministers concerning various aspects of the matter. This may make it necessary for Mr Brittan and other Ministers to be prepared to go further in answering questions about these matters than they would generally regard as appropriate against a background of collective responsibility. The note has therefore been drafted to provide for this, whilst emphasising the need to clear their lines with other Ministers and Cabinet Office and avoiding the creation of precedents for Select Committees to use in future.
5. Finally, the guidance in the note aims for consistency with other relevant discussions that also have a bearing on the situation. Two points are relevant here. First, I understood at our meeting that Sir Robert Armstrong had already advised that manuscript notes taken by officials at meetings should not be disclosed, even where formal meeting minutes based on these notes were released. Secondly, another Select Committee

is currently asking for a copy of Question of Procedure for Ministers (QPM), itself a confidential Cabinet document. As it deals, inter alia, with collective responsibility it has some relevance to this matter. The request has been refused and I expect that will continue to be the line.

6. As the note needs to mesh with arrangements agreed by the Cabinet for clearing statements etc. on the Westland matter, I have not copied this document to other Departments in case I have failed to interpret or reflect those arrangements adequately. Once you (and if appropriate Sir Robert Armstrong) are content that this minute and the note attached are satisfactory, I suggest you simply copy both to Mr Marsh at MOD and Mr O'Shea in DTI.

RAC

R A C HEWES

20 January, 1986

SELECT COMMITTEES: REQUESTS FOR DOCUMENTS AND RELATED QUESTIONS

Note by Machinery of Government Division, MPO

General

1. This note relates to Departmental Select Committees. Special considerations may apply to the Select Committee on the PCA or to the PAC.
2. The Memorandum of Guidance for Officials Appearing Before Select Committees ("The Memorandum" GEN 80/38 attached) contains advice on a wide range of matters relating to Select Committees and this note should be read in conjunction with the Memorandum. Extracts from other relevant documents are also attached. A copy of the Memorandum is in the Library of the House and has been accepted by the Liaison Committee as a fair statement of the position. An earlier version was accepted by the Procedure Committee in 1978.
3. This note does not attempt to explain the powers of Select Committees to call for documents or to summon and examine witnesses. Any instance in which advice on these powers is needed, MG Division should be consulted. In the last resort, in the event of a refusal by a Minister to provide information to a Select Committee, enforcement would be a matter for the House.

Cabinet Documents

4. Paragraph 27 of the Memorandum states unequivocally that "In no circumstances should any Committee be given a Cabinet paper or extract from it or be told of discussions in a Cabinet Committee". There are no known precedents where Cabinet (including Cabinet Committee) documents have been excepted from this rule and it must be followed. Documents for this purpose should be taken as covering Agendas, Memoranda, Minutes and Extracts. The convention concerning the proceedings of the Cabinet was acknowledged in the First Report of the Select Committee on Procedure published on 17 July 1978 (extract attached). It should be noted that the convention is based on the need to preserve the collective responsibility of Ministers, not on any security classification of the documents, and would cover Cabinet documents even if unclassified.

5. If a request for a Cabinet document is addressed to officials, whether in correspondence or in the course of giving oral evidence to a Select Committee:

officials must decline to comply with the request, noting that it is a widely acknowledged and long-standing convention that Cabinet documents should not be provided to Select Committees because this would interfere with the preservation of the collective responsibility of Ministers.

In the unlikely event of a Committee pressing officials further to provide Cabinet documents,

officials should indicate that, if the Committee wishes to take the matter further, this request should be addressed to Ministers.

The Procedure Committee report acknowledged "the final responsibility of Ministers to determine what information should be made available to Committees".

6. If a request for a Cabinet document is addressed to a Minister,

once again he should decline to comply with the request, noting that successive Governments have followed the long standing convention, based on collective responsibility, of not providing Cabinet documents to Select Committees.

If the Committee wanted to press the matter further, they could report the matter to the House. The Minister would then be accountable to the House for his refusal and would be able to defend it, in the same way as for any other decision that he takes. The provision of a fresh memorandum summarising an existing document (or part of it) is likely itself to raise questions concerning collective responsibility where a Cabinet document is concerned, and any such proposal should be referred to the Cabinet Office for advice.

7. The guidance set out in paragraphs 5 and 6 above applies even if the document in question or extract from it have been leaked or its contents disclosed without proper authorisation.

Documents disclosing Advice to Ministers and Correspondence Between Ministers

8. The need to preserve collective responsibility and confidence between Ministers and their advisers is set out in paragraph 26 of The Memorandum. This too is acknowledged in the report of the Procedure Committee. Documents other than Cabinet documents may set out or disclose policy advice given to Ministers or consultation between Ministers on policy matters. Paragraph 26 therefore provides that such documents should not be made available to Select Committees.

9. If officials are requested by a Committee to provide such a document:

officials should decline to comply with the request; indicate that the document requested would disclose policy advice and Ministers and/or consultation between Ministers on policy matters; and note that it is a long-standing convention that questions relating to policy matters should be addressed to Ministers.

The Procedure Committee report noted that "it would not be appropriate for the House to enforce its rights to secure information at a level below that of the Ministerial Head of the Department concerned".

10. If a Minister is asked by a Committee to provide a document other than a Cabinet document, he should not do so if it discloses policy advice from officials as views expressed by Ministers in the process of consultation on policy matters and should note that this is a long-standing practice of successive Governments. He may want to consider whether the information requested by the Committee would be met by a fresh Memorandum summarising an existing document (or part of it). But where this touched on matters of collective responsibility, other Ministers must be consulted and advice sought from the Cabinet Office before agreeing to provide such a document.

11. The guidance set out in paragraphs 9 and 10 above applies even if the document in question or extracts from it have been leaked or its contents disclosed without proper authorisation. If a Minister concludes in such circumstances that the leaking of a document has made this line unrealistic, other Ministers must be consulted and advice sought from the Cabinet Office.

'Private and Confidential' Papers

12. Erskine May notes that the House (and therefore a Select Committee) may only order the production of papers from Government Departments that are "of a public and official character" and are not "private and confidential". "Private and confidential" is not defined, but it is generally taken to refer to information concerning the private or commercial affairs of individuals or companies where that information has been provided to Government in confidence and without consent to disclose.

13. Officials or Ministers asked to provide such documents to a Committee should decline to comply, indicating that it is an accepted practice that information provided to Government in confidence by individuals or companies is not disclosed without their prior consent.

Other Classified Papers

14. The guidance set out above applies to documents in the categories described, whether or not they bear a security classification. Where a document does not fall into one of the categories covered by paragraphs 4 to 13 above (and is not otherwise covered by paragraph 25 of The Memorandum), but bears a security classification, it may be appropriate to provide a copy of the document to the Committee on a confidential basis. Requests for such documents and for oral evidence relating to them should be considered and handled in accordance with the guidance in paragraphs 40-46 of The Memorandum.

page 30
of paper
prepared by
clerk of
House in
1978
page 34

Oral Evidence

15. Officials giving oral evidence to a Select Committee should confine their evidence on matters of policy to statements of fact concerning existing Government policy, explaining what the policies are and the Government's objectives and justification for them (see paragraph 29 of The Memorandum).
16. If asked to comment on policy (or alternative policies) or to answer questions which would disclose advice to Ministers or the process of consultation and decision-making by Ministers, officials should ask that such questioning be addressed or referred to Ministers. A memorandum by the Clerk to the Procedure Committee and the Committee's subsequent report both acknowledged this practice and we know of no occasion on which a Committee has not accepted and followed this procedure, since it is based on the concept of Ministerial accountability to Parliament for their own and their officials' actions.
17. A Minister giving evidence to a Select Committee when asked questions relating to policy and for the process by which decisions were reached must be guided in his answers by the doctrine of collective responsibility. He should not give answers which disclose advice to Ministers or discussions with colleagues; nor should he disclose information provided to Government in confidence by individuals or companies. He will, however, have to take into account the extent to which such matters have already been disclosed by Ministers or where Ministers have explicitly agreed about the extent to which disclosure may be made.
18. Where such matters have been improperly disclosed by others and the Minister feels that he must answer a Committee's question in order to set the record straight, he must consult other Ministers and seek advice from the Cabinet Office before disclosing matters that reveal consultations and discussions between Ministers in arriving at decisions. Before refusing to answer a Committee's questions, a Minister would have in mind that he would have to defend that decision before the House, if the Committee decided to press the matter.
19. Bearing in mind the possibility of the matter being taken further in the House, Ministers should avoid direct quotations from documents that they are unwilling to provide in full. Where a document is quoted from, an order may be made for the document to be laid in full.

Leaked Documents

20. The improper release or disclosure of a document (whether to a Select Committee or otherwise) does not constitute grounds for agreeing to provide to a Select Committee a copy of a document that would not otherwise be provided. Departments should consider whether or not the documents fall into one of the categories referred to above and act accordingly. The Memorandum does not give any specific guidance on the status of leaked

documents. But there is a precedent for refusing to supply documents to the Defence Committee in such circumstances in 1980, when the Committee did not press the matter further.

21. If officials are asked questions about or based on documents that have been leaked or improperly disclosed and these questions raise matters of policy, officials should respond in accordance with paragraph 16 above. The leaked status of the document is not relevant in this connection. Questions to Ministers on leaked documents are dealt with in paragraph 18 above.

22. Further advice in relation to this guidance or on its interpretation and application should be sought from MG Division in MPO, from Mr Wiggins in Cabinet Office or Sir Robert Armstrong's Office.

MG DIVISION

20 January 1986.

EXTRACTS FROM THE FIRST REPORT FROM THE SELECT COMMITTEE ON
PROCEDURE SESSION 1977/78: VOLUME I: 17 JULY 1978

Report:

p.xc, para. 7.8

Civil Servants are presumed to attend on behalf of Ministers and under their directions, and may occasionally ask to be excused from answering questions, most often on the grounds that they involve policy matters which are the responsibility of Ministers. Moreover, the Government has expressed reluctance to provide evidence which involves, for instance, matters of national security, the affairs of private individuals or bodies, information given to them in confidence, matters which are the subject of sensitive negotiation between governments and details of future legislative proposals².

pp.xci/ii/iii, paras. 7.12-7.15

The provision of information by Government departments

7.12. At the end of 1977 we sought from the Head of the Home Civil Service a Memorandum explaining what advice and guidance was given by the Civil Service Department to other Government departments about the treatment of requests from select committees for the provision of papers and records and for the attendance of departmental witnesses, including copies of the relevant CSD circulars. Our Chairman subsequently sought the assistance of the Lord Privy Seal in securing the production of this information. At the end of January the Lord Privy Seal sent us copies of a "Memorandum of Guidance for Officials appearing before Select Committees"⁴, together with a letter which explained that the Memorandum "was prepared entirely for use within Government and it has not been the practice to offer such an internal working document, as it stands, in evidence to a Select Committee". The memorandum was sent to us "for information" and "without prejudice to the existing practice on the disclosure of internal documents". We are grateful to the Government for their co-operation in this matter, and have found the Memorandum of guidance helpful and illuminating. We note that the document carries no security classification, and is presumably available for perusal by any civil servants who may have need of its guidance. We found the contents of the document to be broadly unobjectionable. It provides both a factual explanation of the select committee system, and a set of detailed guidelines on how departments should handle their relations with select com-

mittee, including guidance on what kind of information should not be provided without prior consultation with the Civil Service Department or with the responsible departmental Ministers, and matters which officials should "avoid giving written evidence about or discussing". For the most part the matters mentioned are similar to those referred to by Mr. Crossman in his letter to select committee chairmen in 1967¹.

7.13. We did not feel that the circulation to civil servants of a document of this kind was in itself a matter of concern, so long as its status and implications were clearly understood. Civil Servants give evidence to committees on behalf of Ministers, and Ministers may well feel it desirable to inform their officials about the workings of select committees and to explain to officials their policy towards the provision of information to Parliament. There is a welcome emphasis in the Memorandum of Guidance both on the "duty of officials to be as helpful as possible" and on the final responsibility of Ministers to determine what information should be made available to committees. On the other hand it would be objectionable if it sought to imply any restrictions on the rights of committees to send for persons, papers and records, other than those restrictions imposed by the House or by the Law of Parliament. Although we recognise that there may be occasions when Ministers may wish to resist requests for information—on grounds of national security, for instance—it should ultimately be the responsibility of Ministers to justify their actions in each case either to the committee concerned, or if necessary, to the House.

7.14. Certain matters in the Memorandum of Guidance should, we believe, be drawn to the attention of the House. The first relates to the provision of information about the organisation of departments and the Government machinery generally, the levels at which decisions are taken and the committees and the other bodies which are set up to facilitate inter-departmental discussions and negotiations. In addition to restrictions on the disclosure of the advice given to Ministers by civil servants, and of information about consultations and discussions between Ministers, civil servants are advised not to disclose information "about the level at which decisions were taken", or about "the methods by which a subject is being reviewed e.g. by the Central Policy Staff or under PAR (Programme Analysis and Review)". They should "refuse access to documents relating to inter-departmental exchanges on policy issues", and in response to requests for documents relating to the internal administration of a Department, it would "usually be more appropriate to offer specially prepared papers describing the organisation of the Department or particular parts of it", rather than existing documents such as departmental directories or organisation charts.

7.15. We are aware of the long-standing convention which prevents the disclosure by Ministers or civil servants of the existence, composition or terms of reference of Cabinet Committees, or the identity of their chairmen. We are also aware of the long-standing practice of Ministers to refuse to answer Questions in the House concerning discussions between Ministers or between Ministers and their official advisers or the proceedings of the Cabinet or Cabinet Committees². We are disturbed, however, by the extension of these conventions to all questions of departmental or inter-departmental organisation which, if consistently and uniformly applied, would debar Members and committees from access to information about the organisation of the government service which is essential for any attempt properly to scrutinise the administration and expenditure of government departments. We recommend that select committees should regard any refusal to provide information of this kind—unless fully and adequately explained by Ministers and justified to the satisfaction of the committee concerned—as a matter of serious concern which should be brought to the attention of the House.

7.20. The over-riding principle concerning access to government information should be that the House has power to enforce the responsibility of Ministers for the provision of information or the refusal of information. It would not, however, be appropriate for the House to seek directly or through its committees to enforce its rights to secure information from the Executive at a level below that of the ministerial head of the department concerned (normally a Cabinet Minister), since such a practice would tend to undermine rather than strengthen the accountability of Ministers to the House.

Appendix C: Powers of Select Committees to send for Persons, Papers and Records - Memorandum by the Clerk to the House

p.20, paras. 25-26

25. The case is of course different in regard to civil servants, who can only be presumed to attend as servants of the Crown acting under the direction of Ministers of the Crown. Civil servants do in fact on occasion ask to be excused from answering questions, in accordance with the practice acknowledged in Select Committee procedure and mentioned in the last sentence of paragraph 21 of this memorandum. The most usual ground upon which excusal is requested is that a question concerns policy within the control of Ministers and could only be answered by Ministers. There is no case on record so far as we are aware of a civil servant being ordered to answer a question, still less for a formal report being made to the House of his refusal to do so. Though civil servants are sometimes placed under some pressure to reveal more than they have been prepared to do, it would seem that committees acknowledge that a servant of the Crown may have instructions from the Crown's Ministers as to how he should reply and that the proper remedy lies against the Minister concerned. It would certainly appear more in accordance with Ministerial accountability to the House that Ministers should accept responsibility for the conduct of their officials, and that the House should proceed against Ministers in the last resort by vote of censure or indeed by the refusal of supply.

26. It would be a truism to say that Ministers appearing as witnesses before Select Committees do not invariably answer all questions as completely as some committees would desire² though many committees have, since Ministerial appearances become regular some ten years ago, found Ministers extremely forthcoming in their replies. No detailed statement of government policy on Ministerial evidence before Select Committees appears to be on record³, though a letter addressed by the late Mr. Richard Crossman on 9th May 1967 to the Chairmen of certain Select Committees is relevant (Annex III). It said that Ministers would be unwilling to give evidence to Select Committees on—

- Matters of national security¹;
- Information relating to the private affairs of individuals or individual bodies, where the information had been given on a confidential basis;
- Specific cases where the Minister had a quasi-judicial or appellate function;
- Matters which were the subject of sensitive negotiation with Governments or other bodies;
- The details of such legislative proposals as had not yet been divulged to the House.

p.23, para. 40

40. Papers are frequently provided for Select Committees by civil servants in an informal manner at the request of the committee. It is however, in my view, doubtful whether a committee has any power to order a civil servant to produce papers since they are not in civil servants' custody. All State papers are held and all correspondence that emanates from Departments is constitutionally conducted in the name of the Crown and, in my view, all such papers and correspondence must be considered to be in the custody of Ministers of the Crown, without whose authority they cannot be released. It would seem probable, therefore, that the remedy for failure to produce papers lies against Ministers rather than the officials who work under them. Here again, this position would appear to accord with the constitutional accountability of Ministers to the House.

p.25, para. 52

52. Moreover the boundaries between the information which a government is prepared to give, and that which it insists on withholding, are ill-defined. It is true one would not expect a government to supply information on arguments put forward at Cabinet or Cabinet Committees, or even official working parties. But is there similar objection to revealing the nature of matters under discussion, or the options being considered, or even the existence of the bodies themselves? To formalise the limits within which information could be given might perhaps work against the interests of Select Committees, since it might give rise to excessive rigidity. But more general guidelines might perhaps be given, in amplification of Mr. Crossman's letter to Select Committees (see Annex III and paragraph 26); indeed it might be useful to know whether that letter is still regarded as representing current policy.