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CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

ROLE OF THE COMPTROLLER AND AUDITOR GENERAL

Memorandum by the Chancellor of the Exchequer

When the White Paper on the Role of the Comptroller and Auditor General (C&AG) was debated on 30 November it was severely criticised on both sides of the House. Subsequently Mr Barnett and Mr du Cann put down an Early Day Motion supporting the Report of the Public Accounts Committee, and calling on the Government to reconsider its position. This Motion has attracted 287 names. The House was told that a statement would be made as soon as possible after the Recess. The background is further elaborated in Annex B.

2. The White Paper may have been unpopular, but it expressed a sensible and coherent line on which it would have been preferable to rest. But I am convinced that we must now offer to move towards the views of the PAC. Otherwise we shall be faced with continuing criticism from our own supporters as well as from the Opposition, and the likelihood of defeat if there is a debate on a substantive motion.

3. The PAC's main recommendations were that the C&AG should be

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appointed on the recommendation of the House of Commons, not on the recommendation 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.

4. In my view we must be guided by two prime considerations. First, we should build on the principle stated in our White Paper, that the C&AG's responsibilities, and PAC enquiries, should not extend beyond the range of Ministerial responsibility. If they did, Parliament would have no means of securing the implementation of resulting recommendations, and Ministers would be put in the position of being less informed than Parliament. Nothing was said in the debate to invalidate this principle, which rules out any major extension of the C&AG's duties. Second, we should not offer legislation, which in the present climate would be highly contentious.

5. Annex A is a new statement which might be published as a further White Paper, but which I propose should first be discussed with Mr du Cann and Mr Barnett, in the hope of obtaining their acceptance of it as a reasonable move in the direction they want, at least at the time being. Essentially it is an invitation to the C&AG and the PAC to make more use of the powers they already have, especially in the field of nationalised industries and the relationship to their sponsoring Departments.

6. Two aspects of Annex A are of particular significance.

- a. First, it is suggested that the C&AG should be made responsible to the House, through the PAC. This would be a substantial shift from the stance previously taken by the Government, and by the C&AG himself, and one which could compromise his independence by exposing him to criticism by the House. (This in turn could have significant consequences - e.g. requests from other Committees for

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investigations by the C&AG, which could complicate his role and access as auditor.) On the other hand, the proposal would undoubtedly be welcomed by the critics, and would give them in one area what many want.

- b. Secondly, some Ministers have expressed concern about the reaction of the Chairmen of nationalised industries to what they will see as yet another round of investigations and hearings. In response to this point, the present version of Annex A refers to the need to avoid undue multiplicity of investigations by different bodies and Parliamentary Committees. There was also some feeling that the discussion of the programme of MMC references with the PAC would lead to difficulties and delay. I take this point, but I do not believe that such problems need be insuperable, and the offer of discussion does help to fill out the package.
7. The aim in preparing Annex A has been to try to strike a balance, avoiding both concessions on important points of principle, and the risk of making an offer which would be insufficient to take the trick. Our past, more modest, offers have been rejected; and the Parliamentary pressures probably make it inescapable now that we should go at least as far as is proposed in the Annex. Indeed my main concern is that it will not be thought to go far enough to meet the current criticism.
8. I therefore seek colleagues' agreement to open discussions with Mr du Cann and Mr Barnett, and perhaps others, on the basis of Annex A.

H.M. TREASURY
5 February 1982

(G.H.)

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PROPOSALS CONCERNING THE COMPTROLLER AND AUDITOR GENERAL AND PAC

The Government have carefully considered the views expressed during the Debate in the House of Commons on 30 November 1981, on the Role of the Comptroller and Auditor General (C&AG).

The Government accept the principle that the C&AG should be able to follow public money wherever it goes subject only to the limits set by the extent to which Ministerial responsibility to Parliament is limited.

Under such a principle, the scope for investigation by the C&AG covers the whole of the Civil Service, a large number of public bodies, the NHS and the Universities. If there are any doubts that his scope is as wide as this, the Government wish to take this opportunity to make the position abundantly clear.

The C&AG does not have access to the books of the nationalised industries, local authorities and private sector companies and individuals in receipt of Government grants or loans. The Government wish the C&AG to use his full scope to report on, and the PAC their full scope to investigate, the terms and conditions under which departments have made funds available to such bodies, whether they meet statutory requirements, and whether the terms have been complied with; and the adequacy of monitoring control arrangements and of the information available to the department.

In this important sense public money can and should be followed wherever Ministers may be held responsible for correcting any faults or weaknesses that may be discovered in the administration of the funds involved. The boundaries of the C&AG and the PAC should essentially be the same as those which limit Ministers in their relations with local authorities, nationalised industries and private companies. It is Parliament which has limited Ministers' powers in respect of such bodies; and it has effectively limited its own powers thereby. Nonetheless, in the light of the views expressed in the Debate on 30 November, the Government have re-examined what scope there is further to enhance the status of the C&AG and extend his role.

The Government agree with the PAC that the C&AG should be independent of the Government and should be responsible to the House, through the PAC. To achieve this fully would require legislation, but there is no early prospect of time being found for this. In the meantime they believe the following proposals will effectively, even if not statutorily, achieve these objectives. They could be implemented immediately under existing legislation.

Status of the C&AG and his staff

(a) Appointment of the C&AG

The Government believe that the independence of the C&AG is best preserved if he remains an office-holder under the Crown, and that as for other such appointments responsibility for advice to the Crown about the appointment of a new C&AG should remain with the Prime Minister. The Government have stated the intention, and implemented it, of consulting the Chairman of the PAC about this appointment. The Government reaffirm this intention and hope that it will become a standing convention. In the event of legislation the Government would be prepared to make the C&AG directly accountable to the House.

(b) Staffing of the Exchequer and Audit Department

The Government share the concern of the PAC that the C&AG should have available adequate resources to carry out his responsibilities. The E&AD has been exempted from the current Civil Service manpower cuts, and is part way through a substantial five-year expansion programme, which reflects the C&AG's assessment of his requirements. The Government will continue to make the necessary provision for all reasonable plans put forward by the C&AG for staff numbers, and will take full account of any views which the PAC may wish to express about the complementing of the Department.

(c) Section 3 of the Exchequer and Audit Act 1921

The PAC accept that discretionary powers, as in Section 3(1) of the 1921 Act, to extend the range of C&AG's audit to new accounts, need to be preserved in some form. Until amending legislation can be passed, the Treasury will use its powers under this sub-section only after the PAC has agreed that the direction

should be given. The Treasury's power under Section 3(3) of the Act to arbitrate between the C&AG and departments is obsolete, and has not been used in recent times. The Treasury will not use it in future; and it will be repealed in any future legislation.

Audit of the E&AD

The Government accept the PAC's proposal that the Treasury should appoint auditors for the E&AD, and that their reports be laid before Parliament.

Range of C&AG and of PAC activity

(a) Nationalised Industries

(i) Scrutiny of Nationalised Industries' Annual Accounts

The former Select Committee on Nationalised Industries regularly held discussions with each industry. This lapsed when the Select Committee was abolished. The Government would welcome systematic hearings by Select Committees concerning nationalised industries but it would be wrong to subject the industries and their chairmen to a multiplicity of enquiries by different Select Committees. There is therefore a question for Parliament to decide whether to develop the activity in this field of the departmental Select Committees (or of a re-established Select Committee on nationalised industries), or to introduce as an alternative hearings by the PAC. The rest of this paper is concerned with the latter alternative.

PAC hearings could be held on the published annual report and accounts of the industries. The industries' sponsoring departments and their chairmen could be examined. Such hearings might be linked with any enquiries the C&AG chose to make into the monitoring and control arrangements which sponsor departments exercise over their industries. For this purpose he would have full access to information and papers available to the sponsor department concerning each industry, including papers relating to the appointment of auditors to the nationalised industries, and to the form of accounts direction given by the Secretary of State. Both of these topics would be available to the PAC to investigate.

(ii) Efficiency and audits: Monopolies and Merger Commission Enquiries

The Government consider that the arrangements for the MMC to carry out enquiries in the nationalised industries, as announced by the Financial Secretary on 30 November 1981, represent the most effective way of examining efficiency in the nationalised industries. The MMC already have the necessary skilled personnel and the experience. The Government do not, however, want these arrangements to exclude the PAC from examining the discharge of Ministerial responsibilities in respect of this work.

The Government intends that each nationalised industry will have at least one major reference every four years. The Government are willing to consult the PAC about the programme of references to the MMC. This would ensure that the PAC could play a part in deciding what efficiency audits were undertaken.

When reports are to hand, the Government would welcome action by the PAC to assist in the follow-up to MMC reports. The Secretary of State for Trade will send a copy of each Report to the PAC Chairman. Once the industry's response to the MMC's recommendations and the Government's views thereon have been put before Parliament, the Committee will be invited to question the sponsor department, and industry Chairman, about the Report and the industry's proposals to remedy defects. (The Government do not think that it will be appropriate for the Committee to question the MMC directly on the report, since this would be incompatible with the MMC's quasijudicial role.) The PAC may also wish later to monitor the progress that has been made in implementing the industry's response to the Report. The PAC may wish to make a report, to which the Treasury and departments would respond in the normal way.

(b) National Enterprise Board (NEB)

The PAC recommended that the C&AG should have access to the books of the NEB. In preparing the legislation bringing together the NEB and the NRDC the Government will be considering the audit arrangements for the combined body. These should take account

of the principle stated above that the field of responsibility of the C&AG and of the PAC should match that of Ministers, and of the intended nature of the work of the new body, including its involvement with private sector companies.

(c) Local Authorities

The Government disagree with the PAC substantially on this one issue. They do not consider that the PAC's proposals adequately recognise the responsibility that local authorities have to their ratepayers and electors. The Government's proposals for an Audit Commission for local authorities in England and Wales are already before the House of Commons. The reports of that Commission will be laid before the House, and the Government hope that the C&AG will participate fully in the work of the Commission.

H M TREASURY

5 February 1982

ROLE OF THE COMPTROLLER AND AUDITOR GENERAL - BACKGROUND

The PAC Report of March 1981 on the Role of the Comptroller and Auditor General included proposals for changes in the status of the C&AG and his staff, and extension of the range of his duties. These proposals had their origins in earlier reports by the PAC itself, and by the Expenditure Committee in 1977, and the Procedure Committee in 1978.

The Expenditure Committee recommended that the PAC should be consulted about the appointment of the C&AG, which is made by the Queen on the recommendation of the Prime Minister. In response, the Government of the day undertook to consult the Chairman of the PAC, and this undertaking has been reiterated and implemented by the present Government. The Procedure Committee went further, to argue that the appointment should be determined solely by the House, because the C&AG was essentially a servant of the House. The PAC of 1979 cast doubt on this proposal, seeing it as a threat to the independence of the C&AG, but the present PAC endorsed the proposal in its March 1981 Report. In that Report the PAC endorsed previous recommendations by the Expenditure and Procedure Committees that the staff of the E&AD should no longer be civil servants, but servants of the House. The Procedure Committee also criticised the Treasury's powers under Section 3 of the Exchequer and Audit Act 1921 to direct the C&AG to audit an account, and the PAC agreed that this part of the Act should be modified.

On the range of the C&AG's duties, the PAC in a report in 1977 recommended that the C&AG should have access to the books and records of the NEB and BNOC. In its report in the same year, the Expenditure Committee propounded the general principle that the C&AG should be able to follow public money wherever it goes, including into nationalised industries and local authorities and private companies in receipt of public funds. The Procedure Committee supported this view, which was further endorsed in the PAC's Report in 1981.

In 1979 the previous Government initiated a review of the whole subject. This was confirmed by the present Government and led to the Green Paper in March 1980. This was cautious about any significant change either in status or range. In it the Government said that they felt that the C&AG

Independence would be best protected if he remained an office-holder under the Crown. The Green Paper was more open-minded about the transfer of control of E&AD staff to the House of Commons; and expressed willingness to see Section 3 of the 1921 Act amended.

On the range of the C&AG's duties, the Green Paper rested on the principle of Ministerial responsibility; that the C&AG should be empowered to examine the affairs of bodies only where there is a duty of Ministerial responsibility to Parliament for that body extending beyond the responsibility simply to make payments from voted funds. Otherwise, the Green Paper argued, Parliament would have no reliable means of securing any action to implement any recommendations made to the PAC. On that basis the Green Paper concluded against giving the C&AG access to the nationalised industries, local authorities, and private companies in receipt of public funds. It was non-committal about access to the NEB.

The PAC conducted their own enquiries in 1980, starting from the Green Paper. Their Report broadly endorsed the Green Paper as to the nature of the C&AG's work but put forward the proposals mentioned in paragraphs 2 and 3 above for changing the status of the C&AG and his duties and extending the range of his duties.

The White Paper of July 1981 maintained the line of the Green Paper as to the range of the C&AG's duties. With regard to the nationalised industries, the White Paper drew attention to the role that had been played by the Mergers and Monopolies Commission to report on efficiency; and encouraged the PAC to examine the ways in which sponsor departments exercise their responsibilities. On the NEB the White Paper said that the question of access would be reconsidered when the NEB and the C&AG (whose accounts the C&AG audits) were brought closer together. The Government announced separately proposals for an Audit Commission for local authorities. On the status issues, the White Paper said that the Government were not persuaded of the need for any change in the arrangements of appointing the C&AG, and that the balance of advantage lay with retaining the present arrangements for E&AD staff.