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CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

ROLE OF THE COMPTROLLER AND AUDITOR GENERAL

Memorandum by the Secretary of the Cabinet

At the meeting of the Committee on 9 February (E(82) 4th Meeting, Item 1) I was asked to arrange, in the light of the discussion, for the preparation of "a memorandum on the limits of scrutiny by the Comptroller and Auditor General and by the Public Accounts Committee beyond which a responsible Government could not be expected to go; this memorandum should set out the constitutional case for preserving the independence of the C & A G, and for ensuring that his responsibilities, and PAC enquiries, did not extend beyond the range of Ministerial responsibilities". The purpose of the memorandum was to serve as a basis for explaining the Government's stance, and the importance of the principles underlying it, in any further discussions with Conservative Members of Parliament, and in presenting the Government's proposals to Parliament.

2. The attached memorandum has been prepared accordingly and falls into two sections -

a. The limits to scrutiny by the comptroller and auditor general and the Public Accounts Committee and their relationship to the range of Ministerial responsibility, and

b. The case for preserving the independence of the comptroller and auditor general.

Signed ROBERT ARMSTRONG

Cabinet Office
26 March 1982

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THE LIMITS TO SCRUTINY BY THE COMPTROLLER AND AUDITOR GENERAL (C & A G) AND THE PUBLIC ACCOUNTS COMMITTEE (PAC) AND THEIR RELATIONSHIP TO THE RANGE OF MINISTERIAL RESPONSIBILITY

1. Present range of C & A G's scrutiny

The accounts audited or inspected by the C & A G were set out at Annex B of the Green Paper on the Role of the Comptroller and Auditor General (Cmnd 7845). They include the Appropriation Accounts, Store Accounts and Trading Funds of Government Departments (ie the principal accounts of central Government), and the accounts of a wide range of statutory boards and authorities. The C & A G also has access to inspect the books, but not as appointed auditor, of over 500 bodies which depend in varying degree on public funds, including the universities. The range of the C & A G's audit or inspection is prescribed by statute or may be undertaken by agreement. The C & A G does not have access to local authorities or nationalised industries, or, within the private sector, to numerous companies and other businesses in receipt of voted moneys.

2. Terms of reference of the PAC

The Committee of Public Accounts is appointed under House of Commons Standing Order No 86 "for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet public expenditure, and of such other accounts laid before Parliament as the Committee may think fit". The range of the C & A G's scrutiny does not, therefore, wholly coincide with the terms of reference of the PAC. For example, the accounts of the nationalised industries, although not within the scrutiny of the C & A G, are laid before Parliament, and are, therefore, within the terms of reference of the PAC. The PAC's traditional concern is with the monitoring of financial propriety and the efficiency and effectiveness with which policies have been carried out. It does not normally consider policy issues as such.

3. Terms of reference of the select committees related to Government Departments

These committees are appointed under House of Commons Standing Order No 86A to examine the "expenditure, administration and policy" of the principal Government Departments and "associated public bodies". Each nationalised industry is regarded as being within the terms of reference of one or other of the departmental select committees.

4. Select committee powers to call for persons, papers and records

Both the PAC and the departmental select committees have the power to call for "persons, papers and records". Select committees have no independent penal jurisdiction to enforce these powers, which can be exercised only by the order of the House itself. If a select committee sought the backing of the House in any dispute relating to the exercise of its powers in relation to a matter in which there was Ministerial responsibility, Ministers would be accountable to the House for their actions and those of their officials.

5. Proposed extension of C & A G's remit

In their First Special Report (Session 1980-81) the PAC propose that new legislation "should establish the principle that the C & A G should either audit, or have access to, the books of all bodies in receipt of money voted by Parliament". In subsequent discussions it has sometimes been suggested that the remit should be wider than voted money and apply to all public funds. The Government remains of the view that the acceptance of this principle would involve a fundamental extension of the role and function for which the office of the C & A G was created, with grave implications not only for the holder of that office but also for relations between Parliament and the Executive and between Parliament and the citizen.

6. If the principle was taken to mean that the C & A G should have access to accounts of all bodies, or persons to whom payments are made by Government Departments out of monies voted by Parliament, that would imply an unwarrantable extension of the powers of the C & A G, and indeed of Parliament to enquire into and be informed about the private affairs of individuals, companies, and other

organisations. In the view of the Government, however, the C & A G's right of access to accounts and records must normally be confined within the limits of Ministerial responsibility to Parliament for the proper expenditure of such monies. In this connection it is noted that the papers which the House of Commons itself can require, in the event of refusal, to be produced are, by long standing practice, confined to those which -

a. relate to a public matter in which the House or Crown has jurisdiction;

b. are obtainable from public offices or from corporations, bodies or offices constituted for public purposes by Acts of Parliament or otherwise, and not from private associations or from individuals not exercising public functions, and, if sought from Government Departments, are of a public and official character, and not private or confidential. Account also needs to be taken of the risk that, additional staffing costs apart, any significant extension of the C & A G's remit would inevitably dilute his personal control.

7. It is, in the Government's view, also essential that the consideration of the range of the C & A G's remit should take place within the context of more general constitutional considerations. For example, a system of special investigatory audit, such as that in the United States, is not necessarily applicable in the different constitutional circumstances of this country, where the Executive forms part of the Legislature, and where Ministers can be called directly to account through Parliament by means of the committee system without the need for special investigatory procedures. Further general factors are the extent to which Parliament has available other forms of financial control over public expenditure besides the PAC and the C & A G and the role of the Courts and the Criminal Law in dealing with matters concerned with the misuse of public monies.

8. It is also, in the Government's view, necessary to take into account the special nature of the C & A G's enquiries and the reasons for their effectiveness. The work which the PAC performs, supported by the C & A G differs significantly from that of other methods of Parliamentary scrutiny and the work of the other select committees of the House in that the C & A G, and through him, the PAC, has a traditionally unique and unquestioned access to the internal working documents at every level of the Departments and other bodies within the range of his responsibilities. This unquestioned access, on which the effectiveness of his work depends, is, in the Government's view, closely related both to the essentially audit-based nature of his work and also to the fact that its range is, with very limited exceptions, within the supporting framework of Ministerial responsibility to Parliament.

9. If the purpose of the work of the C & A G were, for example, to move to a significant extent away from its present basis into areas of departmental activity which might be construed as areas of current policy, this might pose considerable problems for the continuance of his present unqualified access to departmental papers. In such circumstances such forms of scrutiny might be better carried out by, for example, the departmental select committees of the House, who would be able to carry out a more general scrutiny without putting at risk the more precise and specialised function which the C & A G performs on behalf of Parliament. As the Public Accounts Committee stated in their Second Special Report (Session 1978-79), "like the Procedure Committee we can also see more substantial difficulties of a constitutional nature in this proposal (E & A D staff helping other select committees), arising from the C & A G's statutory right of access to departmental books and records". This access is granted for the purpose of his audit examination of the accounts; it would not be granted solely to provide information of a more general character relating to policy or administration. Select committees normally operate by commissioning papers from the Department concerned, and taking evidence thereafter. To employ the audit access of the C & A G to supplement this type of enquiry would lead to a dangerous confusion of functions.

10. In the same way it is considered that the work of the C & A G could not be extended significantly beyond the limits of Ministerial responsibility without jeopardising its effectiveness. For example, Ministers clearly could not be called to account by Parliament for any failure by bodies outside their Ministerial authority to produce documents or witnesses. Similarly they could not be called to account by Parliament for any failure by such bodies to implement recommendations made by the PAC. In the Government's view the work of the C & A G is most appropriately underpinned by Ministerial responsibility for the bodies covered by his remit. Insofar as Parliament has laid down that a particular body should lie outside the range of Ministerial responsibility this would, in the Government's view, normally imply an acceptance by Parliament of a consequential restriction of the methods of Parliamentary control. If Parliament wished to extend its capacity to exercise a form of scrutiny appropriate to the activities of the C & A G, then this should be accompanied by a corresponding extension of Ministerial responsibility.

11. Against this background the Government remain of the view that insofar as, for example, the nationalised industries and local authorities lie outside the framework of Ministerial responsibility, it would be inappropriate for the range of the C & A G's responsibilities to be extended to these bodies.

12. Insofar, however as a particular body may lie outside the scope of the work of the C & A G, this need not, of course, preclude other forms of Parliamentary scrutiny which do not require the same unqualified right of access to working documents accorded to the C & A G. In the case of the nationalised industries the Government has already announced its proposals for the Monopolies and Mergers Commission to undertake examinations of efficiency in the nationalised industries. The reports of the nationalised industries themselves already lie within the terms of reference of the PAC and the Government would also welcome action by the PAC in following up reports made by the MMC. Each nationalised industry is, moreover, within the terms of reference of one or other of the departmental select committees and the House has passed

a resolution which would enable these committees to form a sub-committee on the nationalised industries. The Liaison Committee would no doubt advise the House on the avoidance of overlapping enquiries, bearing in mind the danger that the working efficiency of the industries could be impaired by unnecessarily frequent Parliamentary enquiries and the need for constant defensive justification. If Parliament were to decide to develop further the scrutiny of the nationalised industries in any of these ways the Government would co-operate fully on all aspects falling within the range of Ministerial responsibility.

B. THE "CONSTITUTIONAL" CASE FOR PRESERVING THE INDEPENDENCE OF THE COMPTROLLER AND AUDITOR GENERAL

13. Present Status of the C & A G and the Exchequer and Audit Department (E & A D)

The C & A G is an office-holder under the Crown. He holds office during "good behaviour" and is removable only on an Address from the two Houses of Parliament. He is appointed by letters patent on the advice of the Prime Minister, and the Government has expressed the view that before such advice is tendered by the Prime Minister there should be consultation with the Chairman of the Public Accounts Committee. Although his main duties under the Exchequer and Audit Acts are undertaken "on behalf of the House of Commons", he is not subject to direction by the House or by the PAC. Under Section 3 of the Exchequer and Audit Act, 1921 he may be directed by the Treasury to undertake the audit of particular accounts. The staff of the C & A G (the Exchequer and Audit Department) are civil servants, and the costs and staffing of the Department are subject to oversight by the Treasury.

14. Changes of status proposed by the PAC -

i. Method of appointment

The PAC recommend that as Head of a proposed new National Audit Office the C & A G should be appointed in future under letters patent on the advice, not of the Prime Minister, but of the House of Commons, on a Motion to be tabled by the Chairman of a new Public Accounts Commission of Members, following consultation with the PAC. He would become an Officer of the House of Commons.

ii. Status of Staff

It is proposed that the staff of the E & A D should no longer be civil servants but become staff of the House of Commons administered by the Public Accounts Commission, and its costs borne on the House Vote.

iii. Power of direction

It is proposed that as Head of the new National Audit Office, the C & A G should be subject to the direction of the House of Commons, and that such direction should be given on behalf of the House by the PAC. The manner of his examination would remain at his discretion. The proposed power of direction would be specific, to require the C & A G to examine a particular aspect of a body's activities at a particular time. The Treasury's power under Section 3 of the Exchequer and Audit Act, 1921 is a general power to direct the C & A G to audit the accounts of a body. It is a safety net provision where arrangements have not otherwise been made for the C & A G's audit, and the PAC agree that it should continue.

Variants on these proposals have previously been put forward by the Expenditure and Procedure Committees.

15. Criteria for determining the status of the C & A G

In the view of the Government the central criterion in determining the status of the C & A G and the method of his appointment should be that he should be independent of both Parliament and the Executive in the exercise of his statutory responsibilities, and in deciding on the disposition of his staff resources and his audit priorities. The Government further consider that whilst, in their view, the C & A G has been demonstrated by the evidence given to the PAC to be free de facto of executive control, it is nevertheless important that his status should, as far as possible, avoid any grounds for such misconception.

16. Grounds on which Government criteria are based

i. The Government believe that an auditor must be able to carry out his duties free from external pressures. This principle of the auditor's independence is acknowledged in the practice of auditing private sector companies as well as in the public sector, both in the United Kingdom and abroad. It provides an essential safeguard both for the body being audited and for those to whom the auditor reports;

ii. Freedom of the C & A G from any form of formal direction in the discharge of his statutory responsibility is essential if he is to lay out his resources in the way which he considers most appropriate and efficient.

17. Criticisms that present status of C & A G does not provide independence from the Executive

i. Method of appointment

The Government have confirmed that before any recommendation is made by the Prime Minister to the Crown under the existing arrangements for the appointment of a C & A G there should be consultation with the Chairman of the PAC. This practice was followed on a recent occasion. Insofar as the C & A G remains an office-holder under the Crown, it would seem constitutionally more appropriate that the views of the House should be channelled informally in this way rather than for the Crown to seek the advice of Ministers on a recommendation made by the House of Commons, as proposed by the PAC. That status as an office-holder under the Crown is not regarded as inconsistent with independence from the Executive is instanced by the fact that the Clerk of the House of Commons, the senior Officer of the House, is similarly an officeholder under the Crown.

ii. Existing statutory powers of Treasury direction

Under Section 3i. of the Exchequer and Audit Act, 1921, the Treasury have certain limited powers to direct the C & A G to undertake the audit of accounts. The Government undertake that these powers will not in future be used without the agreement of the PAC. The Government also undertake not to

use their obsolete statutory powers under Section 3(3) of this Act to arbitrate between the C & A G and Departments, and accept the PAC's recommendation that auditors should be appointed for the E & A D by the Treasury, and that their reports should be laid before Parliament.

iii. Indirect controls arising from status

The PAC recommend that the numbers, pay and conditions of E & A D staff should not be subject to oversight by the Treasury, since this oversight could be exercised in a way which could seriously limit the extent of his activities. The Government share the concern of the PAC that the C & A G should have adequate staffing resources to carry out his responsibilities. E & A D have been exempted from the current Civil Service manpower cuts, and is in the course of a substantial 5-year expansion programme, reflecting the C & A G's assessment of his requirements. In considering proposals relating to E & A D staffing, the Government will take full account of any views which the PAC may wish to express about the complementing of the Department. Presumably, however Parliament would require some form of oversight to be exercised over the complementing, grading and pay of E & A D staff whatever their status in the public service. Furthermore, in the Government's view, the position in this respect is also safeguarded by the fact that, as stated in his evidence to the Committee, if the C & A G felt his independence threatened in this way he could look to the PAC and Parliament, as the guarantors of his independence, to remedy the position.

18. Consideration of changes in status proposed

Of the changes in status referred to at paragraph 14 above the central recommendation, in the Government's view, is that proposing to give Parliament a statutory power to direct the PAC with regard to the subjects of his enquiries. It would appear possible, as in the case of the appointment of the Clerk of the House, for this power to be granted without changing the C & A G's status as a Crown appointee.

But there would seem little purpose - other than as a presentational formality, and even if his staff were to become his statutory employees instead of civil servants - in the status of the C & A G being altered unless Parliament, through the PAC, had the power to direct his activities.

19. In the Government's view, the taking by Parliament of such a statutory power would be inconsistent with the criterion of independence from both Parliamentary and Executive control set out at paragraph 15 above, and would not extend the de facto statutory and practical independence which he at present enjoys and which no factual evidence presented to the PAC has called into question. Moreover, apart from the problems that such a power could create with regard to the confidentiality of his audit, the risk cannot be ignored that such a development could threaten its non-political character. Freedom from external direction is internationally accepted as an essential safeguard of Government audit.

20. The Government's view remains, therefore, that whilst they would welcome any further development of procedures by which Parliament and the PAC can make their views known to the C & A G with regard to those aspects of his statutory responsibilities to which they attach particular importance, this should stop short of a power of statutory direction. By this means, and on the basis of the changes proposed at paragraph 17, they consider that the C & A G's essential freedom from all external constraints in the course of his audit, and in the manner he reports to Parliament, can best be maintained.

26 March 1982