cc BS

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

Miss Joan MacNaughton
Private Secretary to
The Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1 2AT

6 January 1987

Prime Minister 2
You should see this
for form's sake.
DRN
6/1

Dear Joan,

BRITISH AIRWAYS PRIVATISATION: MINISTERIAL STATEMENTS/PURCHASE OF SHARES BY MINISTERS

My Secretary of State has asked me to write to you about the offering of shares in British Airways to private investors which will take place towards the end of January, with a Pathfinder Prospectus being issued on Thursday 8 January. As we get closer to the time of the offer, and during the offer period itself, members of the Government will need to consider carefully any references they may wish to make to the company or the flotation.

Unguarded or unverifiable statements in speeches, or in response to questions from the media or constituents could have very serious consequences for the flotation, and could even make it necessary for us to delay the flotation. If at all possible therefore, questions about the flotation should be sidestepped. Annex A sets out guidelines for dealing with such questions together with a series of Questions and Answers to illustrate how the guidelines should be interpreted in practice. You will see from this material that the rules have been tightly drawn, but this approach is absolutely necessary in the circumstances. As a general rule, any public statement to be made in the UK or abroad should be specifically cleared in advance with the Department of Transport.

Another area of concern is the legality and propriety of Ministers purchasing and holding British Airways shares. The advice in Annex B addresses this question, and has been prepared in consultation with Sir Robert Armstrong's office. My Secretary of State would be grateful if his colleagues would follow these guidelines when deciding whether they should buy shares. It is of course equally important to avoid the appearance of conflict of interest and if in doubt it is obviously best to err on the side of safety.

I am copying this letter to David Norgrove at No 10, to the Private Secretaries to all Cabinet Ministers, to Murdo Maclean and Rhodri Walters, and to Sir Robert Armstrong. My Secretary of State would be grateful if this guidance could be circulated to all Ministers within Departments.

Yours,

Richard.

R A ALLAN
Private Secretary

[MI]NISTERIAL STATEMENTS ON THE PRIVATISATION OF BRITISH AIRWAYS

There are four basic rules which must be followed:

i) anything said about the share offer, British Airways itself or British Airways' trading environment must be factual, accurate and fair;

ii) statements made outside the UK must have specific regard to the requirements of the local regulatory laws, particularly in the USA;

iii) no opinion should be expressed, and no prediction made about the prospects for the shares or for British Airways' business or about British Airways' competitors or the civil aviation industry generally (beyond, of course, whatever forecasts are set out in the Prospectus after its publication and even these statements must be set in context);

iv) enquirers should be urged to obtain their owncopies of the Prospectus, once it has been published towards the end of January, and to make up their own minds after reading it. No statements should be made which could be interpreted as an inducement or recommendation to buy British Airways shares.

RESPONSES TO QUESTIONS

1. Why is the Government selling British Airways shares?

The British Airways sale is part of a continuing Government programme of returning state companies to the private sector.

2. When will the shares be offered for sale?

Around the end of January. The full Prospectus will be printed in a number of newspapers at that time. A shortened version of the Prospectus will be widely available from the branches of banks and will be sent to anyone registering an interest with the Share Opportunity Office.

3. <u>Why is the Government advertising this sale? Does the advertising reflect a lack of confidence that the public will buy shares?</u>

The advertising is designed to inform people who might be interested in buying shares how they can get the information they need to make their choice. It is up to the members of the public to decide on the basis of the information in the Prospectus which is available to them whether they want to invest in British Airways shares or not.

4. <u>Should I buy British Airways shares? Will they go up in value</u>

You must decide for yourself. Shares can go down in price as well as up.

5. <u>How much is this sale going to cost Government by way of fees, advertising etc?</u>

All the costs of the sale will be presented to Parliament.

ANNEX B

PURCHASE OF SHARES BY MINSTERS

There are two points for consideration:

a) whether it is proper for Ministers to purchase shares in the British Airways issue;

b) what are the constraints, either legal or of propriety in respect of the holding of British Airways shares.

a) Purchase of shares in the British Airways Issue

On the first question, it would clearly be ill-advised for Department of Transport Ministers to purchase shares in the forthcoming British Airways issue. This is because of the potential conflict of interest where Ministers are both shareholders themselves and are responsible for, or associated directly with, decisions which will affect the circumstances of shareholders immediately following the flotation, either through the share price, or matters affecting the regulation of British Airways, its competitors or the civil aviation industry generally. The same advice should apply in respect of Treasury Ministers who are concerned with the privatisation programme, and to the Prime Minister.

The position is less clear cut in the case of Ministers not directly concerned with the privatisation of British Airways. The guiding principle is that laid down in Questions of Procedure for Ministers that Ministers "must so order their affairs that no conflict arises, or appears to arise, between their private interest and public duties" and specific guidance on shareholdings is contained in paragraphs 72 and 73.

Paragraph 73 says that Ministers should "scrupulously avoid speculative investments in securities about which they have, or may be thought to have, early or confidential information likely to affect the price of those securities". The decision to privatise British Airways has, of course, been the subject of Cabinet and Cabinet Committee discussion and this has inevitably involved consideration of Britiss Airways' prospects. Although many Ministers will not have had access to detailed financial information there is a danger that Ministers might be thought to have had access to inside knowledge. There is therefore some risk of embarrassment and the safest course would be for Ministers not to purchase shares during the initial flotation.

b) Subsequent holding of British Airways Shares

Here, of course, the issues are very like those which would apply to the holding of any securities, but particularly shares held in any company where the Government continued to have substantial contractual and regulatory dealings. The legal issues are quite straightforward in broad outline:

i) it is a criminal offence ("insider dealing") for a Crown servant (ie a Minister or a civil servant) who has, because of his position, price sensitive information about a company's securities, to deal in them whether or not on the Stock Exchange (here or abroad) unless he can prove he did not intend to take advantage of the information so as to make a profit or avoid a loss. Actually applying for British Airways shares in the initial issue does not fall within this (because, in the view of our solicitors, it is not "a dealing" but is, rather, a direct contract with the Secretary of State). However, it is most unlikely that a Minister (or civil servant) other than one concerned with the regulation of or contracts with British Airways will have such information because of his position per se;

ii) if Ministers (or civil servants) are concerned in the regulation of British Airways or one of its competitors, or the civil aviation industry generally, a shareholding in British Airways may well be evidence of bias in particular regulatory decisions.

Bias invalidates administrative acts and may well found an action in damages against the Crown.

Here again the advice contained in Questions of Procedure, and particularly in the paragraphs referred to above, is relevant.

Ultimately Ministers must decide for themselves whether to purchase British Airways shares. They will want to bear in mind that it is as important to avoid the appearance of conflict of interest as to avoid actual conflict.