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From J P Spencer
Date 13 April 1989

Mr Turnbull

c.c. PS/Sir Robin Butler
Miss B Phillips

SELECT COMMITTEES: POWER TO SEND FOR PERSONS

You asked for advice on the powers (and sanctions) available to Select Committees to require the attendance of persons: and in particular Sir Leon Brittan as a European Commissioner, and Lord Armstrong.

2. The authorities here are Erskine May (esp. pp 696-700, 739-40) and a memorandum by the Clerk of the House of Commons to the Select Committee on Procedure 1977-8 (16-21).

3. The general position is that the House of Commons may summon any UK citizen as a witness, and this power is passed on to Select Committees. In practice, committees virtually always operate by requesting the attendance of witnesses rather than via a formal summons; there are only a handful of cases of formal summons since 1945.

4. There are no sanctions available if a person declines a request from a Committee to appear. If a committee issues a summons, this is delivered to the individual by or on the authority of the Serjeant at Arms. If an individual were to fail to obey such a summons, he may be ordered to be sent for in custody of the Serjeant at Arms, or he may be declared guilty of a breach of privilege; in such cases the person is generally sent to prison, though the precedents cited by Erskine May are nineteenth century. Although Erskine May is not explicit, it appears that the authority of the House as a whole, not just the Committee, is required to apply these sanctions.

Overseas witnesses

5. Witnesses have never been summoned from overseas, though Erskine May is ambiguous on the position of UK citizens overseas (as Sir Leon would be). Foreign nationals (and all citizens overseas) are routinely invited to give evidence. If tested, the criterion for a summons is likely to be analagous to a court - is the individual within the jurisdiction of Parliament. (This was the Clerk's view in 1978, and has not been checked with lawyers here.)

Members of the House of Lords

6. If a Commons committee wishes to question a member of the House of Lords, "a message must first be sent requesting their lordships to give leave to the witness concerned to attend." Under SO 22, the Lords have given a general leave to attend Commons select committees to any Member of their House requested

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to do so "if they think fit" - ie only if they wish to do so. May makes it clear that committees are advised to "give him private intimation, and to learn that he is willing to attend, before a message is sent to request his attendance".

Conclusions

7. It appears probable that Sir Leon Brittan and Lord Armstrong could avoid attendance before a Commons Select Committee on procedural grounds - Sir Leon because he is (usually) outside the jurisdiction, Lord Armstrong because the Commons have no power to compel the attendance of a member of the Lords. I would want legal confirmation before any weight were placed on these assessments.

8. That said, my clear judgment is that we should avoid relying on procedural arguments in dealing with pressure from select committees for further evidence from Sir Leon Brittan or Lord Armstrong. The full formal powers of Parliament to summon witnesses are exercised very rarely, and the sanctions to enforce a summons not this century. In consequence, reliance on procedural arguments would itself be unprecedented in recent times, and could therefore be expected to provoke a very public row about the rights of Parliament liberally laced with allegations that reliance on these arguments must mean that the individuals had something to hide.

9. The better course would surely be for Sir Leon and Lord Armstrong to respond to approaches from Select Committees (which are bound to be in the conventional form of requests) by reminding them that they had given extensive evidence in 1986 which they stand by, making very clear that they had nothing further to add, and declining the request. If it were not already crystal clear, the Government could make its view known to the chairman of the committee concerned (NB the chairmen of the Defence, Trade and Industry, and Treasury and Civil Service Committees are all on the government side); I find it hard to believe that the Government majorities on the committees will see any mileage in prolonging the revival of the issues in question.

10. I shall be out of the office this afternoon, and in my absence any enquiries should be directed to Barbara Phillips (270 6442).

B. Phillips

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