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10 DOWNING STREET

From the Principal Private Secretary

MR HATFIELD
CABINET OFFICE

PUBLIC APPOINTMENTS : TREASURY AND CIVIL SERVICE
COMMITTEE

The Prime Minister has seen Miss Buchan's minute of 18 March, a copy of which was forwarded to this office. She has noted that there are no strong grounds on which objection could be made to an inquiry by the Treasury and Civil Service Committee into the general topic of public appointments procedure. But she considers it important that evidence should be related to general questions of principle and practice and should not cover individual appointments, and that the conventions which apply to Parliamentary Questions on advice to The Queen should be held to apply to the provision of evidence to the Committee on appointments which are made following advice to The Queen.

F.E.R.B.

24 March 1983

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Parliament

NBPM



PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AJ

24 March 1983

Her Lordship

SELECT COMMITTEE ON EDUCATION, SCIENCE
AND ARTS

...

I enclose a copy of the letter dated 22 March which I have received from the Clerk to the Committee and which we discussed on the telephone.

I am copying this to Robin Butler (No 10).

Yours truly,

D C R

D C R HEYHOE
Private Secretary

Richard Hatfield Esq
Private Secretary to
Sir Robert Armstrong
Cabinet Office

Mr Butler o/r

Prime Minister

To see MPO advice. It

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looks as if this inquiry will go ahead, but if you agree I will say that the MPO's introductory memorandum should make the points at A and B below.

- 1. MR PETERSON
- 2. PS/PERMANENT SECRETARY

FEB 22.3.

Mrs Flanagan (o/r)
Mr Barrows

PUBLIC APPOINTMENTS : TREASURY AND CIVIL SERVICE COMMITTEE

You asked in your minute of 18 March for advice and material which could be used in argument against an Inquiry into the public appointments procedure.

It does not appear to us that there are strong grounds on which we could object to an inquiry by the Committee into the general topic of public appointments procedure.

Public appointment procedures, insofar as the work of the Public Appointments Unit is concerned, are within the administrative functions of MPO and thus within the scope of the Treasury and Civil Service Select Committee. Two previous inquiries have touched on this topic; in 1979 the Select Committee on Nationalised Industries and in 1980 the TCSSC took evidence on the function and operation of the PAU. It would be difficult therefore to justify at this stage an attempt to put the general subject of Public Appointments Procedure outside of the remit of TCSSC.

This does not mean that the Committee, once the inquiry has been initiated, have totally unrestricted access to evidence on the topic. Government can, and in the past has, refused to give evidence on particular areas or aspects of enquiries. In general these refusals are based on the guidance contained in the Memorandum of Guidance to Officials and in the Memorandum of Guidance to Ministers (extracts attached). In the case of public appointments the SC on the Nationalised Industries accepted when taking evidence on the work of the PAU that questions should relate to general questions of principle and practice and should not cover individual appointments.

At this stage MPO have been asked to provide an introductory memorandum on appointments procedures to assist the Committee to determine the precise scope of its enquiry. This memorandum could, in addition to providing the factual material requested, register any reservations which Ministers wanted observed, such as:-

- a. that as the MPO role through the PAU is advisory and the selection process for each appointment remains with the Department and Minister concerned, our evidence would be limited to our central function;
- b. that the conventions which apply to Parliamentary Questions on advice to The Queen will be held to apply to the provision of evidence to the Committee on appointments which are made following advice to The Queen.

Jay Buchan

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(Miss) J M E Buchan
18 March 1983

LIMITATIONS ON THE PROVISION OF INFORMATION

General

23. Committees' requests for information should not be met regardless of cost or of diversion of effort from other important matters. It might prove necessary to decline requests which appeared to involve excessive costs. It may be necessary for a Department to consult their Minister if a particular request seems to involve an unreasonable amount of extra work.

24. The Procedure Committee recognised that there may be occasions when Ministers may wish to resist requests for information on grounds of national security. Appendix C of the Committee's Report (the memorandum by the Clerk of the House) reproduces the text of a letter of 9 May 1967 to the Chairmen of certain Select Committees from the then Lord President of the Council and Leader of the House, which refers (among other limitations on the provision of information) to "information affecting national security, which would normally be withheld from the House in the national interest". Guidance to departments on the release of classified information to Committees is given in the manual "Security in Government Departments". This manual is the overriding authority; what follows must be read subject to its guidance. Officials must not disclose information which the manual says must be withheld; they should consult their Departmental Security Officers if in doubt.

25. Officials should not give evidence about or discuss the following topics:

i. In order to preserve the collective responsibility of Ministers, the advice given to Ministers by their Departments should not be disclosed, nor should information about interdepartmental exchanges on policy issues, about the level at which decisions were taken or the manner in which a Minister has consulted his colleagues. Information should not be given about Cabinet Committees or their discussions (see paragraphs 26-28).

ii. Advice given by a Law Officer (see paragraph 31).

iii. The private affairs of individuals or institutions on which any information held by Ministers or their officials has been supplied in confidence (including such information about individuals which is available to the Government by virtue of their being engaged in or considered for public employment).

Officials should also, where possible, avoid giving written evidence about or discussing the following matters. Where appropriate further guidance is provided in the succeeding paragraphs:

iv. Questions in the field of political controversy (see paragraphs 29-30).

v. Sensitive information of a commercial or economic nature, eg knowledge which could affect the financial markets, without prior consultation with the Chancellor of the Exchequer; sensitive information relating to the commercial operations of nationalised industries, or to contracts; commercial or economic information which has been given to the Government in confidence, unless the advance consent of the persons concerned has been obtained (but see paragraph 48 on the kind of contract information which may, in certain circumstances, be provided).

vi. Matters which are, or may become, the subject of sensitive negotiations with Governments or other bodies, including the European Community, without prior consultation with the Foreign and Commonwealth Secretary, or in relation to domestic matters the Ministers concerned (see paragraph 32).

vii. Specific cases where the Minister has or may have a quasi-judicial or appellate function, eg in relation to planning applications and appeals, or where the subject-matter is being considered by the Courts, or the Parliamentary Commissioner (see paragraphs 33-34).

Where, exceptionally, matters such as iv-vii have to be discussed, application may be made for "sidelining" (see paragraph 46). There is no objection to saying in general terms why information cannot be given and it is very unusual for a Committee to press an official who indicates that he is in difficulty on such grounds in answering a question. If however this happens, it may be best to ask for time to consider the request and to promise to report back. Paragraphs 6-7 should be referred to.

Collective Responsibility

26. Departmental witnesses, whether in closed or open session, should preserve the collective responsibility of Ministers and also the basis of confidence between Ministers and their advisers. Except in a case involving an Accounting Officer's responsibility (see C8 and 9 of "Government Accounting") the advice given to Ministers, which is given in confidence, should not therefore be disclosed, though Departments may of course need to draw on information submitted to Ministers. It is necessary also to refuse access to documents relating to interdepartmental exchanges on policy issues. Equally the methods by which a current study is being undertaken, eg by the Central Policy Review Staff, should not normally be disclosed without the authority of Ministers, unless they have already been made public. Nor should Departments reveal the level at which decisions were taken. It should be borne in mind that decisions taken by Ministers collectively are normally announced and defended by the Minister responsible as his own decisions, and it is important that no indication should be given of the manner in which a Minister has consulted his colleagues (see also paragraph 31 on the special position of the Law Officers).

27. In no circumstances should any Committee be given a Cabinet paper or extract from it, or be told of discussions in a Cabinet Committee. Nor should information be given about the existence, composition or terms of reference of Cabinet Committees, or the identity of their chairmen, beyond that information disclosed by the Prime Minister in answer to a Parliamentary Question on 24 May 1979 (see Appendix B), and if witnesses are questioned on such matters they must decline to give specific answers. There is, however, no objection to pointing out in general terms that consultation between Departments runs through the whole fabric of government and occurs at all levels both official and Ministerial.

28. Departmental files will tend to concern the matters referred to in paragraph 25 above, and Departments should consult their Ministers, and should also advise the Civil Service Department when dealing with any request

generally comply with the requests of Committees, and Committees themselves have rarely pressed their requests if good reason were shown for not meeting them, there is little recent experience of a Committee exercising its formal powers, or of a dispute requiring resolution by the House. Ministers should aim to avoid such disputes unless a matter of principle or overriding importance is at stake.

Attendance

Ministers

5. The general power of Select Committees to send for "persons" does not apply to Members of either House of Parliament. Ministers who are Members of either House can be "invited" by a Commons Select Committee to attend to give evidence to it. Only the House of Commons can order a Minister who is a Member of the House to attend before a Select Committee. A Minister who is a Member of the House of Lords must be given leave by that House to appear before a Commons' Select Committee and need attend only 'if he thinks fit'.

6. Ministers should, so far as possible, accede to requests from Select Committees to attend before them. A Select Committee may choose to study a subject which concerns other Departments in addition to its "parent" Department, and there will therefore be occasions on which a Minister is invited to appear before a Select Committee other than that for his own Department to give evidence on matters within his own sphere of responsibility. Nevertheless, it might still be a proper ground for refusal of an invitation that a Minister is not ministerially responsible for the matter about which he is asked to give evidence. Ministers have declined invitations on these grounds in the past. If a Select Committee wished to press a request, regardless of ministerial responsibility, only the House as a whole could order a Minister to attend.

Officials

7. Officials* appearing before Select Committees do so on behalf of their Ministers. It is customary, therefore, for Ministers to decide which officials (including members of the Armed Services) should appear to give evidence. Select Committees have in the past generally accepted this position. Should a Committee invite a named official to appear, the Minister concerned, if he did not wish that official to represent him, might suggest to the Committee that another official could more appropriately do so, or that he himself should give evidence to the Committee. If, however, these suggestions were rejected, and the Committee insisted on a particular official appearing before them, they could issue a formal order for his attendance. In such an event, the official would have to appear before the Committee. Arrangements might be made, if necessary, for the official to attend in company with his Minister. In any event, the official would remain subject to Ministerial instructions as to how he should answer questions.

Answers in oral evidence

Ministers

8. Erskine May (19th edition, page 687) states that: "when a Member submits himself to examination . . . he is not at liberty to qualify his submission by stipulating that he is to answer only such questions as he pleases". It is, however, recognised that the extent to which a Minister gives a direct and full answer to a question must be a matter for his judgment, taking account of considerations of public policy. Speaking for the Government in the debate on 25 June 1979 the Chancellor of the Duchy of Lancaster said:

"Inevitably there will be occasions when Ministers will have to decide that it would not be in the public interest to answer certain questions or to disclose information. There are conventions governing these matters that the House has accepted over a long period and that the Government will respect. They are dealt with in the Procedure Committee's report, and the Committee for the most part was satisfied with them.

"The Government will make available to Select Committees as much information as possible, including confidential information for which, of course, protection may have to be sought by means of the sidelining procedure. There may also from time to time be issues on which a Minister does not feel able to give a Select Committee as much information as it would like. But on these occasions Ministers will explain the reasons for which the information has to be withheld." (*Hansard*, 25 June 1979, column 45.)

9. The conventions to which the Chancellor of the Duchy of Lancaster referred were summarised in 1967 by the then Leader of the House (Mr. Crossman) and, though never formally endorsed by the House, have been largely followed since then. The matters on which Ministers were said to be unwilling to give them information included matters of national security, the private affairs of individuals or companies where information had been given on a confidential basis, matters which were or might become the subject of sensitive negotiations with Governments or with other bodies, and specific cases where the Minister concerned had a quasi-judicial or appellate function. These categories are not exhaustive and Ministers should not, for example, disclose information which is commercially or financially sensitive.

10. Information may be given to Select Committees on a confidential "not for publication" basis and Ministers can ask that a Committee sit in private session, rather than in public, if they are likely to be asked for information which they would not be willing to provide except on such a basis. The decision about publication rests, however, with the Select Committee. Such matters apart, the extent to which information would be given in answer to a Parliamentary Question is a useful, but not conclusive, guideline in considering whether it should be given in answer to a question from a member of a Select Committee.

Officials

11. In the past, Select Committees have recognised that officials who appear before them do so on behalf of their Ministers and under their directions. A Minister may therefore instruct his officials about the manner in which they should answer questions or about matters on which they should decline to answer questions. He should, of course, be ready to appear before the Committee or the House to answer in the usual way for the conduct of his officials.

12. The Memorandum of Guidance for Officials Appearing before Select Committees gives details of the matters on which officials should not provide information, including matters mentioned in paragraph 9 above. Officials are advised not to express opinions on matters of Ministerial policy or indicate the advice that they or other officials have given to Ministers, and they are to avoid, so far as possible, entering into matters of political controversy.

13. There is no record of a civil servant being ordered by a Select Committee to provide a substantive answer to a question when he has declined to do so, or of a Select Committee reporting such a refusal by a civil servant to the House.



10 DOWNING STREET

Prime Minister

I have asked M P O
to advise on the attached
before 11 a.m. on Monday
so that there would be
time for someone to talk
to Mr. du Cann or
another member of the
Committee before their meeting on
Monday afternoon.

(I remember that the TCSC
had an inquiry into public
appointments only a year or two ago)

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Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

F E R Butler, Esq
No 10 Downing Street
LONDON SW1

18 March 1983

New Robin,

...
I told you that a Sub-Committee of the Treasury and Civil Service Committee may be about to hold an enquiry into appointments to "public sector bodies". I attach a copy of a letter from the Committee's Clerk, which reached us - and the MPO - yesterday: as you will see, it suggests that the precise scope of the proposed enquiry is as yet undetermined. So, I gather, is the composition of the Sub-Committee, though the Clerk has told Peter Kemp that it is possible that Michael English might be its Chairman. All may apparently become clearer after a TCSC (in-house) discussion on the afternoon of 21 March.

2. It occurs to us that if any action were to be taken to fend off this enquiry, or limit its scope, it might be best taken before Monday afternoon. But this is of course something on which you will wish to have MPO advice, and I am accordingly copying this letter to Mary Brown, Richard Hatfield and Colin Peterson.

Yours ever,

J O Kerr

J O KERR
Principal Private Secretary

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TREASURY AND CIVIL SERVICE COMMITTEE

16 March 1983

Dear Peter

Appointments by Ministers

The Committee have decided that they would like their Sub-committee to enquire into the subject of the appointments which Ministers have to make to various bodies in the public sector. I think it would help the Sub-committee to determine the precise scope of its enquiry if you could let us have a preliminary note on the subject. Such a note might give us some idea of the range and number of appointments involved, to what extent they were made under statutory authority, to what extent (if any) Parliament was involved in particular appointments, how a field of candidates was assembled and the degree to which the actions of individual Ministers were coordinated from the centre.

It may be that this is a matter for the MPO rather than, or as well as, the Treasury and I am copying this letter to Jenny Flanagan in case this is so.

The Sub-committee have also been asked to review the responses the Committee have had to their report on the Acceptance of Outside Appointments by Crown Servants. This is, I think, a matter for the MPO but I am not asking for any submission on that at the moment - beyond the up-to-date information about such appointments which Colin Peterson sent us on 3rd March 1983.

Yours sincerely

C.A. Larsen
C.A. Larsen

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MPO.
 Miss E.C. Flanagan
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