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Ref. A01146

PRIME MINISTER

Departmental Select Committees

(C(80) 1)

BACKGROUND

The First Report from the Select Committee on Procedure for Session 1977-78 recommended the establishment of Select Committees related to Departments to provide the House of Commons "with the means of scrutinising the activities of the public service on a continuing and systematic basis" (recommendation 31). In June last year the Cabinet accepted in principle the establishment of these Select Committees and agreed to take no action on recommendations to increase their formal powers (CC(79) 6th Conclusions, Minute 5). Arguments about membership within the Opposition meant that the Committees were not set up and did not seek evidence from Departments until December. The present memorandum gives Cabinet an opportunity to discuss issues raised by the initial work of the Committees which colleagues have brought to the notice of the Chancellor of the Duchy.

2. The most important question is the potential overlap between Select Committees and the House on the examination of Bills (paragraphs 2-5 and Annex, paragraphs 4 and 5 of C(80) 1). This has been raised by the Secretary of State for the Environment because his Select Committee wished to investigate the implications of selling council houses which is, of course, dealt with in the Housing Bill now before the House. Similarly, the Employment Committee intended to consider the legal immunities of trade unions, on which Ministers have decided to legislate further in the Employment Bill. The Chancellor of the Duchy proposes that Select Committees should be discouraged from examining matters covered by Bills while they are in Standing Committee. This is the view of the Secretary of State for the Environment (his letter of 12th December) and also of the Secretary of State for Scotland.

CONFIDENTIAL

3. The possibilities of duplication of effort over statutory instruments and European legislation seem much less than with Bills (paragraphs 6 and 7). The Chancellor of the Duchy proposes that the Government should not discourage Select Committees considering topics dealt with in delegated legislation, or in White Papers if they want to.

4. The doctrine that advice to Ministers is confidential is well established, though occasionally challenged. The proposal is to confirm that doctrine (paragraph 8). The revised Memorandum of Guidance to Officials is proposed for circulation to the Liaison Committee for information. A short annex of the Memorandum is appended to this brief.

5. The queries about "the associated public bodies" whose activities the Committees may examine are, for the most part, not difficult to answer. The Chancellor of the Duchy offers three guidelines (paragraph 10). A question has arisen over the Security Service, for which the Home Secretary has Ministerial responsibility, but which would not be caught by the other two guidelines (it is not a Quango, and Ministers do not generally answer Questions in Parliament about it). The Home Secretary has taken the line with this Select Committee which is put forward in the last sentence of paragraph 10, i. e. that it would not be in the public interest to provide information about the Service. You will remember that you endorsed the view in paragraph 5 of my note of 3rd December 1979 to Mr. Sanders that the Government should stand firmly on the ground that it does not accept that the Security Service and its affairs are within the terms of reference of the Home Affairs Select Committee.

HANDLING

6. Unless you wish to give the Chancellor of the Duchy the opportunity to make some general remarks about his memorandum, you could simply take each section of the paper in turn, leaving any other points which Ministers wish to raise until the end.

Matters included in legislation

7. The Chancellor of the Duchy of Lancaster proposes that Ministers should seek to discourage Select Committees from examining matters covered by Bills which are in Standing Committee. This would leave Select Committees free to examine and to seek evidence about matters in a Bill that -

CONFIDENTIAL

- (a) Had been introduced first into the House of Lords.
- (b) Was awaiting Second Reading in the Commons; or (in practice, less likely)
- (c) Was awaiting Report or Third Reading.

The Chancellor of the Duchy, the Secretary of State for the Environment and the Secretary of State for Employment may wish to comment. The Lord Chancellor may have views about Bills before the Lords, and other Ministers may be concerned about the consequences of simultaneous consideration of Bills by two Parliamentary procedures. The Minister of State, Civil Service Department, may wish to contribute on the implications for the workload of the Civil Service.

8. It should be perfectly possible to persuade Select Committees to agree to the limited proposal in the paper. A wider "hands-off" policy, for example, that Committees should refrain from examining matters in Bills before Parliament might be much more controversial and difficult to secure. As a first step, the Chancellor of the Duchy's proposal may be felt to be sufficient.

Other matters before Parliament

9. The Chancellor of the Duchy proposes that Select Committees should not be discouraged from seeking evidence about statutory instruments or other matters likely to be debated. The examination of the merits of a statutory instrument by a Select Committee can be distinguished from examination of its vires by the Scrutiny Committee. The likelihood of overlap between a Select Committee and the EEC Secondary Legislation Committee is not very great. The Secretary of State for Scotland, who raised the issue on the Rate Support Grant Order (Annex, paragraph 3) may wish to comment. The Home Secretary, who has given evidence to the Home Affairs Select Committee, may have views on the appearance of Ministers rather than officials when Committees are considering controversial matters.

Advice to Ministers

10. You may wish to ask your colleagues to confirm their acceptance of the doctrines that advice given by Law Officers and advice from officials to Ministers should not be disclosed to the House or otherwise made public.

CONFIDENTIAL

Associated public bodies

11. The terms of reference of the Select Committees extend to the associated public bodies of Departments. It seems right that Departments should provide lists of these bodies if asked to do so. You might ask the Minister of State, Civil Service Department, to speak to the suggestions in paragraph 10 about the guidelines for listing these bodies where that is necessary. You will wish to confirm that other Ministers are content.

12. The Home Secretary may mention the line he has taken over the Security Service; you will wish to avoid discussion of the non-avowed intelligence services for which the Foreign and Commonwealth Secretary is responsible, though it is partly to protect their position that we need to take a firm line on the Security Service.

13. The Chancellor of the Exchequer may possibly express reservations about including the Bank of England. The Pliatzky Report lists the Bank (along with the BBC, the IBA, Cable and Wireless, and the Covent Garden Marketing Authority) as a public corporation. More to the point, the Select Committee on Nationalised Industries considered the Bank of England and these other bodies. Departmental Committees will expect to follow suit.


Other matters

14. You may wish to give Cabinet colleagues the chance to raise any other matters relating to Select Committees not covered in the memorandum.

CONCLUSIONS

15. Subject to any modifications agreed in discussion, you will wish to guide the Cabinet to endorse the proposals in the paper and to agree the handling (paragraph 11):

- (a) The Chancellor of the Duchy to put the Cabinet's views about matters covered by Bills to Mr. Du Cann, the likely Chairman of the Liaison Committee.
- (b) Departmental Ministers (if action is necessary before the Liaison Committee is set up) to discuss with the Chairmen of their Select Committees the issues in the memorandum in the light of the Cabinet's conclusions.



CONFIDENTIAL

The Chief Whip may suggest, in addition, some concerted approach to Conservative Party Chairmen or members of the Departmental Select Committees would be useful. You may think that the issues are not at present sufficiently crucial to justify this.



ROBERT ARMSTRONG

16th January, 1980

MEMORANDUM OF GUIDANCE

1. The Civil Service Department some years ago issued a Memorandum of Guidance to all Government Departments for the use of officials appearing before Select Committees. It contains an outline of the Select Committee system, including the powers of the Committees, and gave guidance on such matters as the provision of official evidence, procedures enabling the Committees to be given confidential information, and the form of Departmental replies to Select Committee reports.

2. The Procedure Committee asked for a copy of the document and it was published as Appendix D to their first report for the 1977/78 session. The report described the memorandum as "broadly unobjectionable". The Memorandum of Guidance has recently been revised and brought up to date; but few changes of substance have been made. The Minister of State, Civil Service Department, circulated the revised version to all Ministers in charge of Departments on 21 December, and no substantial comments have been received. He proposes to issue it to Departments shortly, and the Chancellor of the Duchy of Lancaster will let the Liaison Committee have a copy for their information.

3. Mr Christopher Price, MP, who is Chairman of the Education Select Committee, criticised in a recent article the advice given in the Memorandum about matters on which officials should not give evidence. There are three pages of guidance on a wide variety of situations. On the disclosure of the Advice of Officials to Ministers it says -

"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."

CONFIDENTIAL

On the Advice Given by a Law Officer it says -

"There should not be disclosed to a Committee any advice that may have been given by the Law Officers. There is a well established convention that the advice which Law Officers give to Ministers is confidential. It is only when Law Officers expressly authorise the disclosure of that advice, or themselves report to or advise Parliament or a Committee, that such advice is revealed."