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FILE TITLE:

Conduct

SERIES

Ministers

PART:

8

PART BEGINS:

19 Feb 05

PART ENDS:

5 MAY 05

CAB ONE:

Labour Administration

PREM 49/4236

SECRET

PART

CLOSED

DATE CLOSED	5 MAY 2005
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Series : **MINISTERS**

File title : **CONDUCT**

Part : **8**

Date	From	To	Subject	Class	Secret
03/03/2005	LP	PM	Liaison committee Osmotherly rules	U	
11/03/2005	Cab Off	SIS	Ministerial Interests - David Mills	S	818
28/03/2005	Cab Off		Register of interests	U	

12



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28 March 2005

Members of the Cabinet Office Strategy Board

Cc: Jerry Page

Register of Interests

The Government's Resource Accounting Manual lays down a requirement on departments to include within their annual report details of company directorships and other significant interests held by Board members which may conflict with their management responsibilities. This requirement can be met by setting up a Register of Interests, open to the public, and describing in the annual report how it can be obtained.

The Cabinet Office does not currently report any external interests of Board members or maintain a Register of Interests for the Board. The National Audit Office highlighted this deficiency in their Management Report on the Cabinet Office Annual Report and Resource Accounts, 2003-04.

In accordance with the NAO's recommendations, I propose that Board members (other than the Minister, for whom separate arrangements exist) should sign and submit a form, stating any involvement in the governance of other public bodies, charities and private companies. The Register that is compiled from this information could then be made available to the public on request.

I attach the first form, which covers the financial year 2004-05. I would be grateful if you could complete the form and return it to me in hard copy by 15 April 2005.

In future, Board members will be asked to submit returns on a six-monthly basis (covering April – September and October – March).

Please let me know if you require any further information about this requirement.

COLIN BALMER

CABINET OFFICE STRATEGY BOARD

DECLARATION OF INTERESTS
for the period of 1 April 2004 to 31 March 2005

*I declare that, during the period in question, I have held the following interests
(could include involvement in other public bodies, charities and private companies):*

NONE.

Signed:

M. Ivan Rogers

Name:

M. Ivan Rogers

Date:

30.3.05

Please return this form to Alec Taylor, Room 304, 70 Whitehall, by 15 April 2005.

THE	
NATIONAL	
ARCHIVES	

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PRIVATE AND CONFIDENTIAL

Sir Andrew Turnbull KCB CVO
Secretary of the Cabinet and Head of the
Home Civil Service
70 Whitehall
London
SW1A 2AS

Your Ref

Our Ref 7490

28 February 2005



Dear Andrew



MINISTERIAL INTERESTS

I enclose a copy of a letter from David Mills of 24 February 2005 providing an update on his personal and professional interests, and of my reply. No doubt you will let me know of any comments or concerns on the wider front.

A handwritten signature in black ink, appearing to read 'Sue Street'.
SUE STREET

Mills Saint James

S O L I C I T O R S

30 St. James's Street

London SW1A 1HB

T: + (44) (0) 870 753 7700

F: + (44) (0) 870 753 7800

E: dmdm@mstj.com

Ms Sue Street
 Department for Culture, Media and Sport
 4/5 Cockspur Street
 London SW1

24th
 22nd February 2005

Dear Sue

I am writing to update you on my personal and professional interests.

I am resigning from my position as managing director of BDIC (UK) Limited with effect from the end of this month. I will no longer be engaged by its majority owner, Mr Zolanvari, except ad hoc on a professional basis. For the time being I will have the use of its premises when required.

I have formed a 50:50 partnership with Dr Shahram Shirkhani, an Iranian citizen who was a partner in ILTC with Mr Zolanvari. He has a US law degree and lives between Tehran and Dubai (where his family lives). We have formed a limited company, Saint James Capital Limited, as the vehicle of the partnership. Its main business at present is trade finance (in a joint venture with Deutsche Forfait AG) and legal and financial consultancy.

We have been engaged by Alphasteel Limited of Newport, South Wales to assist on a number of issues, and I have in fact seconded myself to their London office at 55 Bryanston Street, W1, so will be spending little time in BDIC's office. Alphasteel belongs ultimately to Mr Mohammad Rostami Safa, an Iranian with a number of steel factories and plants in Iran, Abu Dhabi, Switzerland and the UK. He is a private citizen with no government position of any kind.

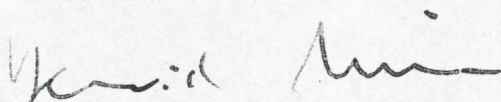
I cannot see that these activities present any risk of conflict of interest with Tessa's position, any reputational risk to her or HMG, or give rise to the perception that such risks could arise. I am in no way representing the Iranian government, any of its organs or agencies and have no personal interest in HMG's policies towards Iran, except that a UK-supported embargo on trade with it would clearly damage me to greater or lesser degree.

I continue to practise as a solicitor under the style of Mills Saint James.

I enclose a copy of the press statement that I will use (and which I have already supplied to Tessa's private office) if there are any enquiries about recent developments in the endless Berlusconi prosecution saga in Italy.

Please let me know if you want any further information about any of the above.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'David Mills', with a stylized flourish at the end.

David Mills

PRIVATE AND CONFIDENTIAL

David Mills Esq
Mills Saint James
30 St James's Street
London
SW1A 1HB

Your Ref

Our Ref 7490

28 February 2005



Dear David

MINISTERIAL INTERESTS

Thank you for your letter of 24 February 2005 providing an update on your personal and professional interests.

I do not think your change in employment causes any direct conflicts with Tessa Jowell's position as Secretary of State for Culture, Media and Sport. Of course, there may be wider considerations and I am referring your letter to the Cabinet Office for advice. I will get back to you if any points arise.

Yours

A handwritten signature in cursive script, appearing to read 'Sue'.

SUE STREET



10 DOWNING STREET

Jonathan

SAT is contact with me raised 08mately

on your second point - these rules apply to No 10 now just as they always have. But now, as before, the decision as to who represents him is made by the PM. So we can continue to refuse requests for e.g. you or Julian LG to attend select ctces. Content?

Kate.

26/3

Kate

yes

✓ 7/6.

file pls



10 DOWNING STREET

Jonathan

late
fine if a) AT is content
b) it does not affect
mbs going to 10.
J2

Following PM's commitment 11/3.
(at liaison ctee last yr) to
review the osmoterly rules, PM
has given evidence to liaison ctee
and agreed the attached
revisions.

The revisions do not change the
substantive point that it remains
a Minister's final decision on whether
an official (or SpAd) should give
evidence to a select committee.
But the wording is slightly warmer
than the previous version.

On this basis, I think the revised
rules are fine and we should
agree them.

Content - or do you want me
to minute the PM?

Kate
9/3/05



LEADER OF THE HOUSE OF COMMONS

THE RT HON PETER HAIN MP

Our Ref: GL105

3 March 2005

PRIME MINISTER

KFG
cc DT.

LIAISON COMMITTEE: OSMOTHERLY RULES

In evidence to the Liaison Committee last year, you agreed to a review of the rules relating to *Department Evidence and Response to Select Committees* (better known as the Osmotherly rules). You asked me to lead on this work for you. This notes reports on the outcome of this work and the subsequent discussions with the Liaison Committee.

The Liaison Committee asked for the review as they wanted greater access to civil servants and official papers equivalent to that which had been given to the Hutton inquiry.

I gave evidence to the Liaison Committee on our proposed revisions on two occasions – one private and one public session. The key points are as follows:

Summoning of named officials – in my evidence to the committee I explained that there would be a presumption that Ministers would agree to requests from Select Committees for evidence from named officials but that the final decision on who is best able to represent the Minister rests with the Minister concerned and it remains the right of a Minister to suggest an alternative civil servant. The Committee have accepted this. However, it is important that when such requests are received, Ministers are seen to be considering the request on the merits of the case and that where a request is turned down we should suggest an alternative (civil servant or Minister) who would be better placed to give evidence.

Access to papers – The Osmotherlys make clear that we will continue to be as helpful as possible to Select Committees. Where there are sensitive papers we will try to provide to Select Committees on a confidential basis. Where we cannot do this we will explain our reasons citing FOI exemptions.



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Parliamentary Privilege – following on from a report of the Standards and Privileges Committee which censured Charlie Falconer for his department's actions in disciplining an NDPB Board member for giving evidence to a select committee, the revision states that there must be no disciplinary action taken against individuals for giving evidence to a select committee.

The discussions with the Liaison Committee have gone surprisingly well, and they have said they will see how they work in practice. If you agree, I will provide the Committee with the agreed revision and inform them that they will be issued in due course.

I am copying this minute to Andrew Turnbull.

P.H.

2 March 2005

Departmental Evidence and Response to Select Committees

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1. INTRODUCTION

Status of the Guidance

1. This memorandum gives guidance to officials from Departments and their Agencies who may be called upon to give evidence before, or prepare memoranda for submission to, Parliamentary Select Committees. It replaces the January 1997 edition.

2. Although NDPBs give evidence on their own account such bodies may nonetheless also find helpful, when preparing to give evidence, some of the general information about evidence and select committees set out in this memorandum. Further guidance for members of NDPBs invited to give evidence to select Committees is set out in the Cabinet Office publication *Guidance on Codes of Practice for Board Members of Public Bodies*.

2. In providing guidance, the memorandum attempts to summarise a number of long-standing conventions that have developed in the relationship between Parliament, in the form of its Select Committees, and successive Governments. As a matter of practice, Parliament has generally recognised these conventions. It is important to note, however, that this memorandum is a Government document. Although Select Committees will be familiar with its contents, it has no formal Parliamentary standing or approval, nor does it claim to have.

Scope of the Guidance

3. This guidance is intended to cover the Select Committees of both the House of Commons and the House of Lords.

4. It does not apply in every respect to the Committee of Public Accounts, because of the special position of Accounting Officers in relation to that Committee and the direct access of the Comptroller and Auditor General to departmental records. The position is set out in the HM Treasury document "The Responsibilities of an Accounting Officer". Further advice on giving evidence to the Committee of Public Accounts can be obtained from the Treasury Officer of Accounts and his staff.

5. Supplementary guidance on the procedures to be followed in respect of the House of Commons European Scrutiny Committee (and the corresponding House of Lords European Union Committee) and on the handling of European Community documents is issued separately by the Cabinet Office (European Secretariat).

6. Supplementary guidance on the procedures of the Joint Committee on Statutory Instruments, is provided in "Statutory Instrument Practice". Copies are available from HMSO (http://www.hmso.gov.uk/services/si_practice.htm). For guidance on the Lords Delegated Powers and Regulatory Reform Committee, and the Lords Merits of SIs Committee, see their most recent Special Reports, available on www.parliament.uk.

7. Officials may occasionally be invited to give evidence to Parliamentary Committees, or their equivalents, of other countries. Before accepting, such requests should be discussed with the FCO and referred to Ministers. Supplementary guidance on appearances before Committees of the European Parliament is issued by the Cabinet Office (European Secretariat).

Central Principles

8. Select Committees have a crucial role in ensuring the full and proper accountability of the Executive to Parliament. Ministers have emphasised that, when officials represent them before Select Committees, they should be as forthcoming and helpful as they can in providing information relevant to Committee inquiries. In giving evidence to Select Committees, officials should take care to ensure that no information is withheld which would not be exempted if a parallel request were made under the Freedom of Information Act.

SECTION 2: THE SELECT COMMITTEE SYSTEM

General Description

9. Select Committees are appointed by the House to perform a variety of functions, generally of inquiry, investigation and scrutiny and they report their findings and recommendations to the House. They are to be distinguished from Standing Committees whose function is to examine and debate certain matters such as Bills and delegated legislation.

10. Most House of Commons Select Committees have a continuing existence and their terms of reference and powers are laid down in Standing Orders of the House. Others may be established on a sessional basis for a particular purpose.

11. The House of Commons Select Committees which officials are most likely to come into contact with are:

- the departmentally-related Select Committees listed in paragraph 20 below
- the Committee of Public Accounts (the PAC)
- the Public Administration Select Committee (PASC)
- the European Scrutiny Committee.

12. The Procedure Committee may occasionally invite evidence from Departments as may, less frequently, the Committee on Standards and Privileges. The Liaison Committee carries out certain co-ordinating functions on behalf of the various House of Commons Select Committees and takes evidence twice a year from the Prime Minister. The normal Government contact with this Committee is through the Office of the Leader of the House. The Regulatory Reform Committee examines the Government's proposals for amending legislation under the terms of the Regulatory Reform Act 2001. The Environmental Audit Committee audits Departments and NDPBs' performance against environmental protection and sustainable development targets.

13. The Committee of Selection has no requirement for evidence from Departments; nor usually do the various Select Committees concerned with the finance, business and domestic affairs of the House.

14. The House of Lords has two main Select Committees - the European Union Committee and the Committee on Science and Technology - which are reappointed at the beginning of each session. Both Committees have Sub-Committees and there is power to co-opt additional members to these Sub-Committees as appropriate.

15 The Delegated Powers and Regulatory Reform Committee examines the appropriateness of the order-making powers in legislation before the House and considers legislative proposals under the Regulatory Reform Act 2001. The Constitution Committee examines the constitutional implications of Bills, and keeps under review the operation of the Constitution. The Economic Affairs Committee has a wide remit to consider economic affairs. The Merits of Statutory Instruments Committee examines the merits of all SIs subject to affirmative and negative procedure (except those laid before the Commons only) and reports to the House those of particular interest. The Merits Committee bases its consideration on the Explanatory Memorandum published on each instrument.

16. In addition, there may also be one or more ad hoc Select Committees in the House of Lords which undertake enquiries into matters of policy. Ad hoc Select Committees cease to exist once they have reported to the House and rarely last for more than one session.

17. There are also a number of Joint Committees of both Houses. These include:

- the Joint Committee on Statutory Instruments (JCSI) is responsible for scrutinising statutory instruments to ensure that they meet certain criteria and are drafted properly. The JCSI may ask departments for evidence in explanation of particular instruments
- the Joint Committee on Human Rights considers matters relating to human rights in the UK and has responsibility for scrutinising remedial orders under the Human Rights Act 1998.

18. Ad hoc Joint Committees may also be established for specific purposes for example, to examine a policy area or to conduct pre-legislative scrutiny of a draft Bill.

19. Finally, all of these Committees are to be distinguished from the Intelligence and Security Committee established under the Intelligence Services Act 1994. Although the membership of that Committee is drawn from both Houses of Parliament, it is not a Committee of the House as such, and reports to the Prime Minister under separate statutory powers and duties laid down in the Act.

House of Commons: Departmental-related Select Committees

20. There are currently eighteen such Committees. They are as follows:

SELECT COMMITTEE	MAIN GOVERNMENT DEPARTMENTS CONCERNED
Constitutional Affairs	Department for Constitutional Affairs
Culture, Media and Sport	Department for Culture, Media and Sport
Defence	Ministry of Defence
Education and Skills	Department for Education and Skills
Environment, Food and Rural Affairs	Department for Environment, Food and Rural Affairs
Foreign Affairs	Foreign and Commonwealth Office
Health	Department of Health
Home Affairs	Home Office; Attorney General's Office, Treasury Solicitor's Department, Crown Prosecution Service, Serious Fraud Office
International Development	Department for International Development
Northern Ireland Affairs	Northern Ireland Office
Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions	Office of the Deputy Prime Minister
Science and Technology	Office of Science and Technology (OST)
Scottish Affairs	Scotland Office, Advocate General's Office
Trade and Industry	Department of Trade and Industry (excluding OST)
Transport	Department for Transport
Treasury	Treasury, Inland Revenue and Customs & Excise
Welsh Affairs	Wales Office
Work and Pensions	Department for Work and Pensions

21. The orders of reference of these Committees are contained in House of Commons Standing Order No.152 (full text at Annex A).

22. The Committees have a remit to examine the expenditure, administration and policy of the principal government Departments referred to, and also of their 'associated public bodies'. Standing Order No.152 does not define 'associated public bodies' but the Government has accepted that Select Committees should be able to look at the activities of public bodies that exercise authority of their own and over which Ministers do not have the same direct authority as they have over their own Departments.

23. The broad test is whether there is a significant degree of ultimate Ministerial accountability for the body in question. This means that, as well as Departments and their Agencies, Select Committees may, for example, examine the expenditure, administration and policy of Non-Departmental Public Bodies and NHS bodies. In practice, the remit has also extended to non-Ministerial Departments.

Powers of Select Committees

24. The powers of Select Committees derive from the powers of the House and from the Standing Orders. It is for the Committees themselves, and ultimately for the House, to interpret their terms of reference. Under Standing order No.152 (3), each of the Commons Departmental Committees has power to set up a sub-Committee. The Environment, Food and Rural Affairs Committee has power to set up two. Under Standing order No.137A, each Committee or sub-Committee has power to meet concurrently with any other Committee or sub-Committee of either Houses of Parliament.

25. Select Committees (and their Sub-Committees) have power to 'send for persons, papers and records' relevant to their terms of reference. The issue of an order for an individual to attend or to provide evidence can exercise these powers, formally. Enforcement of these formal powers and, in particular, the power to punish for contempt of the House, is retained by the House itself and can be exercised only by the House as a whole, not by the Select Committee.

26. A full discussion of the powers of Select Committees, and how these powers are exercised in practice, is contained in a memorandum by the then Clerk of the House of Commons which was published as Appendix C to the First Report from the Select Committee on Procedure, Session 1977-78, HC 588-I.

27. In that same 1977-78 Report (which led to the establishment of the present departmentally-related Select Committee system), the Procedure Committee emphasised the primacy of Ministerial accountability to Parliament. Officials can, of course, be summoned or invited to appear, or asked for information, under the Committees' powers but, almost invariably, this is done as part of the process of overseeing Ministerial accountability:

'The over-riding principle concerning access to government information should be that the House has power to enforce the responsibility of Ministers for the provision of information or the refusal of information. It would not, however, be appropriate for the House to seek directly or through its committees to enforce its rights to secure

information from the Executive at a level below that of the ministerial head of the department concerned (normally a Cabinet Minister), since such a practice would tend to undermine rather than strengthen the accountability of Ministers to the House."

28. Although this passage appears in the context of proposals to increase the powers of Select Committees in relation to Ministers (proposals which, in the event, were not adopted by the House) the general principle nonetheless holds good.

29. If a Select Committee sought the backing of the House in any dispute with the Government as to the exercise of its powers, Ministers would be accountable to the House for their actions and those of their officials. The Government has given a commitment that, where there is evidence of widespread general concern in the House regarding an alleged Ministerial refusal to divulge information to a Select Committee, it would seek to provide time for the House to express its view (Official Report, 16 January 1981, Column 1312). In such circumstances it would be for members of the Committee to argue why the House should exercise its powers to require the production of papers, and for Ministers to explain the reasons of public policy for withholding them.

30. In practice, Committees usually proceed on the basis of informal requests for departmental witnesses and evidence rather than through the exercise of their formal powers. It should be noted that, in pursuing their examination of the expenditure, administration and policy of Government Departments and associated public bodies, Select Committees are free to seek evidence from whoever they wish, and can send for papers and records from private bodies or individuals where these are relevant to the Committee's remit.

Core tasks

31. In its 2002 Report on Select Committees, the Select Committee on Modernisation of the House of Commons (First Report, Session 2000-01, HC 224-1) recommended that there should be an agreed statement of the core tasks of the departmental select committees. On 14 May 2002, the House of Commons approved a resolution inviting the Liaison Committee to establish common objectives for Select Committees. The core tasks agreed by the Liaison Committee are set out in the Annual Report for 2002 (First report, Session 2002-03, HC 558).

Public and Closed Evidence Sessions

32. Select Committees' own deliberations are held in closed session but Committees usually admit the public and the press to hearings at which they take evidence from witnesses. Departmental witnesses (and those officials who are sitting behind them in support) should bear in mind that such public proceedings may also be televised or sound broadcast, usually in edited form and will be webcast on the Parliament website. Committees may, on request from a witness, agree to take evidence in closed session if sensitive or confidential material is likely to be discussed (see paragraphs 86—89).

Informal Briefings

33. In addition to taking formal evidence, Committees may invite Ministers or officials to informal meetings at the start of an inquiry to brief them on the main issues or, more generally, to update them on technical and other developments within their field of responsibility. Departments may also offer such briefings or informal visits to departments if they feel it would be helpful. The guidance in Sections 3 and 4 applies in these circumstances also.

Travel Overseas by Select Committees

34. Departmental Select Committees and some others have power to "adjourn from place to place" and may travel outside Westminster in connection with their inquiries. They may also travel overseas. In relation to overseas visits, the Committee Clerk will in the first instance contact the Parliamentary Relations and Devolution Department (PRDD) in the Foreign and Commonwealth Office for advice on the timing and content of such visits. The FCO and the British Embassies and High Commissions concerned are closely involved in the organisation of these visits and a representative from the overseas post will normally accompany members of the Committee on their calls. Meetings overseas are generally conducted on an informal off-the-record basis although formal evidence is sometimes taken. The FCO will ensure that Departments are aware of any proposals for overseas travel and will be glad to offer advice.

Departmental Select Committee Liaison Officers (DSCLOs)

35. Most Departments appoint a Liaison Officer as the main point of contact at official level between the Department and the Select Committee and its Clerk. Executive Agencies normally use their parent Department's Liaison Officer as their main point of contact but may also wish to nominate an agency contact point for an individual inquiry into their work.

36. Committee Clerks will generally use the Liaison Officer as the channel for requests for information and memoranda. They will usually be glad to talk informally to Liaison Officers about their Committee's work and co-operate by, for example, providing the Departments most concerned with advance copies of evidence taken by the Committee from other witnesses.

Provision of Departmental Publications

37. There will be many departmental publications which will be of interest to a Committee, either in relation to a current or previous inquiry or more generally. Departments should provide the Clerk of their Committee with a copy of such relevant publications free of charge. If further copies are requested they should also be provided free of charge, though Liaison Officers should if necessary discuss with Clerks the need for multiple copies of expensive publications. (See also paragraph 112(a) on the provision of copies of Command Paper responses to Committee Reports).

General Elections: Dissolution of Parliament

38. Select Committees set up by Standing Order continue in existence until that Standing Order is amended or rescinded. However, when Parliament is dissolved pending a General Election, membership of Committees lapses and work on their inquiries ceases. The point of contact for Departments continues to be the Committee Clerk who remains in post to process the basic administrative work of the Committee (including the publication after dissolution of any reports which the Committee had authorised prior to dissolution). Departments should continue to work, on a contingency basis, on any outstanding evidence requested by the outgoing Committee and on Government responses to outstanding Committee Reports. It will be for the newly appointed Committee to decide whether to continue with its predecessor's inquiries; and for the incoming administration to review the terms of existing draft responses. As it is also for the newly appointed Committee to decide whether to publish Government responses to its predecessor's Reports, an incoming Government may wish to publish such responses itself by means of a Command Paper (see paragraph 112(a)).

SECTION 3: ROLE OF OFFICIALS GIVING EVIDENCE TO SELECT COMMITTEES

General

39. Civil servants who give evidence to Select Committees do so on behalf of their Ministers and under their directions.

40. This is in accordance with the principle that it is Ministers who are accountable to Parliament for the policies and actions of their Departments. Civil servants are accountable to Ministers and are subject to their instruction; but they are not directly accountable to Parliament in the same way. It is for this reason that when civil servants appear before Select Committees they do so on behalf of their Ministers and under their directions because it is the Minister, not the civil servant, who is accountable to Parliament for the evidence given to the Committee. This does not mean, of course, that officials may not be called upon to give a full account of Government policies, or indeed of their own actions or recollections of particular events, but their purpose in doing so is to contribute to the central process of Ministerial accountability, not to offer personal views or judgements on matters of political controversy (see paragraphs 54-55), or to become involved in what would amount to disciplinary investigations which are for Departments to undertake (see paragraphs 72-77).

41. This Guidance should therefore be seen as representing standing instructions to officials appearing before Select Committees. These instructions may be supplemented by specific Ministerial instructions on specific matters.

Summoning of Named Officials

42. The line of ministerial accountability means that it is for Ministers to decide which official or officials should represent them.

43. Where a Select Committee indicates that it wishes to take evidence from a particular named official, including special advisers, the presumption should be that Ministers will agree to meet such a request. However, the final decision on who is best able to represent the Minister rests with the Minister concerned and it remains the right of a Minister to suggest an alternative civil servant to that named by the Committee if he or she feels that the former is better placed to represent them. In the unlikely event of there being no agreement about which official should most appropriately give evidence, it is open to the Minister to offer to appear personally before the Committee.

44. Where a civil servant is giving evidence to a Select Committee for the first time, Departments will wish to ensure that they provide appropriate guidance and support. Committees may be willing to consider requests for individuals to be supported in oral evidence sessions by more experienced civil servants

45. It has also been agreed that it is not the role of Select Committees to act as disciplinary

tribunals (see paragraphs 72-77). A Minister will therefore wish to consider carefully a Committee's request to take evidence from a named official where this is likely to expose the individual concerned to questioning about their personal responsibility or the allocation of blame as between them and others. This will be particularly so where the official concerned has been subject to, or may be subject to, an internal departmental inquiry or disciplinary proceedings. Ministers may, in such circumstances, wish to suggest either that he or she give evidence personally to the Committee or that a designated senior official do so on their behalf. This policy was set out in the then Government's response to a report from the Public Service Committee on Ministerial Accountability and Responsibility (First Report, Session 1996-97, HC 67).

46. If a Committee nonetheless insists on a particular official appearing before them, contrary to the Minister's wishes, the formal position remains that it could issue an order for attendance, and request the House to enforce it. In such an event the official, as any other citizen, would have to appear before the Committee but, in all circumstances, would remain subject to Ministerial instruction under the terms of this Guidance and the Civil Service Code.

Position of Retired Officials

47. Given the above, it is extremely rare, but not unprecedented, for Committees to request evidence from officials who have retired. A Committee could, again, issue an order for attendance if it chose. However, retired officials cannot be said to represent the Minister and hence cannot contribute directly to his or her accountability to the House. It is primarily for these reasons, as well as for obvious practical points of having access to up to date information and thinking, that Ministers would expect evidence on Government matters to be given by themselves or by serving officials who report to them.

External Expert Witnesses

48. If Departments wish to include any external experts in the team of officials giving evidence, the Clerk should be consulted with an explanation of the reasons. Most Committees are willing to agree to departmental requests of this kind but they are not obliged to do so.

Agency Chief Executives

49. Where a Select Committee wishes to take evidence on matters assigned to an Agency in its Framework Document, Ministers will, normally, wish to nominate the Chief Executive as being the official best placed to represent them. While Agency Chief Executives have managerial authority to the extent set out in their Framework Documents, like other officials they give evidence on behalf of the Minister to whom they are accountable and are subject to that Minister's instruction.

NDPBs

50. Departmental Select Committees have an important role in examining the expenditure,

administration and policies of NDPBs. Lords Committees and other Committees may also seek evidence from NDPBs from time to time. Members of NDPBs invited to give evidence should be as helpful as possible in providing accurate, truthful and full information, taking care to ensure that no information is withheld which would not be exempted if a parallel request were made under the FOI Act. Further guidance for members of NDPBs invited to give evidence to select Committees is set out in the Cabinet Office publication *Guidance on Codes of Practice for Board Members of Public Bodies*.

Parliamentary Privilege

51. Parliamentary proceedings are subject to absolute privilege, to ensure that those participating in them, including witnesses before select committees, can do so without fear of external consequences. This protection, enshrined in the Bill of Rights, is an essential element in ensuring that Parliament can exercise its powers freely on behalf of its electors. There must be no disciplinary action taken against civil servants or members of NDPBs (or anyone else) as a consequence of them giving evidence to a Select Committee. Any such action might be regarded as contempt of the House, with potentially serious consequences for those involved. [See Sixth Report of the Committee on Standards and Privileges, Session 2003-04, HC1055.]

SECTION 4. EVIDENCE TO SELECT COMMITTEES

4A. PROVISION OF EVIDENCE BY OFFICIALS: CENTRAL PRINCIPLES

General

52. The central principle to be followed is that it is the duty of officials to be as helpful as possible to Select Committees. Officials should be as forthcoming as they can in providing information, whether in writing or in oral evidence, to a Select Committee. Any withholding of information should be decided in accordance with the law and care should be taken to ensure that no information is withheld which would not be exempted if a parallel request were made under the FOI Act.

Accuracy of Evidence

53. Officials appearing before Select Committees are responsible for ensuring that the evidence they give is accurate. They will therefore need to be fully briefed on the main facts of the matters on which they expect to be examined. This can be a major exercise as a Committee's questions can range widely and can be expected to be testing. Should it nevertheless be discovered subsequently that the evidence unwittingly contained factual errors, these should be made known to the Committee, usually via the Clerk, at the earliest opportunity. Where appropriate, a correcting footnote will appear in the published transcript of the evidence.

Discussion of Government policy

54. Officials should as far as possible confine their evidence to questions of fact and explanation relating to government policies and actions. They should be ready to explain what those policies are; the justification and objectives of those policies as the Government sees them; the extent to which those objectives have been met; and also to explain how administrative factors may have affected both the choice of policy measures and the manner of their implementation. Any comment by officials on government policies and actions should always be consistent with the principle of civil service political impartiality. Officials should as far as possible avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. If official witnesses are pressed by the Committee to go beyond these limits, they should suggest that the questioning should be referred to Ministers.

55. A Select Committee may invite specialist (as opposed to administrative) officials to comment on the professional or technical issues underlying government policies or decisions. This can require careful handling where Committees wish to take evidence from, for example, government economists or statisticians on issues which bear on controversial policy questions and which are also matters of controversy within the respective profession. Such specialists may find themselves in some difficulty if their own judgement on the professional issues has, or

appears to have, implications that are critical of Government policies. It is not generally open to such witnesses to describe or comment upon the advice which they have given to Departments, or would give if asked. They should not therefore go beyond explaining the reasoning which, in the Government's judgement, supports its policy. The status of such evidence should, if necessary, be made clear to the Committee. If pressed for a professional judgement on the question the witness should, if necessary, refer to the political nature of the issue and, as above, suggest that the line of questioning be referred to Ministers.

NAO and PAC Reports

56. In those areas where the National Audit Office (NAO) and the Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) have direct access to departmental papers, this does not itself confer a similar right of access on the Committees which they serve. In considering any request from the Committee of Public Accounts (PAC) for such access, the Treasury should be consulted. Where the Public Administration Select Committee is taking evidence on Ombudsman issues, it may be necessary to quote from departmental papers in connection with particular Parliamentary or Health Service Commissioner cases. It is not however the practice of the Committee to require evidence which would amount to the 'retrial' of individual cases.

57. A departmentally-related Select Committee may, on occasion and with the agreement of the PAC, take up a NAO report and invite departmental evidence on it. The Government has confirmed that it has no objection to such an arrangement provided that it is not taken as implying any alteration in the Comptroller and Auditor General's remit or programme of work in support of the PAC, or in the procedures for consulting Departments on draft NAO reports. The conventions relating to departmentally-related Select Committee business, for example governing the choice of witnesses to represent Ministers and the form of the response to the Committee's report, should continue to apply in such cases. A full statement of these provisos is set out in the Government's response (Cm 1532) to recommendation (xlvi) of the Procedure Committee's 1990 Report on the Working of the Select Committee System.

Consulting Ministers on Evidence

58. Because officials appear on behalf of their Ministers, written evidence and briefing material should be cleared with them as necessary. It may only be necessary for Ministers to be consulted if there is any doubt among officials on the detail of the policy to be explained to the Committee, or on what information should be disclosed. However, as Ministers are ultimately accountable for deciding what information is to be given and for defending those decisions as necessary, their views should be sought if a question arises of withholding information which a Committee has asked for.

Inter-departmental Liaison

59. The subjects of inquiry by Select Committees may on occasion go beyond the

responsibilities of the Department which they are responsible for monitoring. It is important in these cases that the Department with the predominant role should take the lead to ensure that the evidence given is co-ordinated and consistent. This will usually, but not invariably, be the Department which the Committee in question has a remit to "shadow". If the subject under inquiry is one under which no Department can be said to have a predominant role, it may be necessary for a central co-ordinating office, such as the Cabinet Office, to act as lead Department and, for example, to submit the Government's written evidence; that will, however, be the exception rather than the rule.

60. In such cases it is clearly desirable for all the Departments concerned, in accordance with normal working practice, to be kept in touch on the preparation of evidence and on the subsequent response to the Committee's Report. Very often there will be co-ordinating machinery in place for the subject already but Liaison Officers also have an important role here and should always be informed of requests for evidence involving other Departments.

61. Government Departments should, wherever possible, co-operate fully with inquiries on joined-up policies. For some Departments, the potential involvement is considerable; and, where a Committee's request for oral or written evidence poses a particular burden of work on a Department, this should be discussed with the Committee.

Research and Surveys

62. If Departments are asked by Committees to undertake research work or surveys on their behalf, the department will try to meet the request. However, there may be circumstances where providing such information would involve significant cost and/or effort. In these cases, Departments should explore informally with the Clerk to the Committee whether the Committee's request could be met in a different way. If the request would require substantial research it may be appropriate to suggest to the Committee that it consider commissioning independent research.

63. The information provided by officials to a Committee as part of a research project or survey is subject to the same principles as apply to direct evidence. In particular, there is a standing rule that officials should not take part in research projects or surveys designed to establish their personal views on Government policies or on matters which are politically contentious. [*Civil Service Management Code, paragraph 4.2.8*]

Ministerial Statements

64. Wherever possible, Committees should be given advance notice of impending Ministerial statements on matters which are relevant to their current inquiries. A convenient method if the Minister is making the statement in Parliament is by way of notification to the Clerk at the same time as the Whips inform the Opposition, which is normally at noon on the day of the statement. This notification to the Clerk should be of the fact that the statement is to be made but should not include the text of the statement itself. If the statement is to be made other than in the House,

similar arrangements should apply, and should continue to be observed during the Parliamentary Recess or after dissolution of Parliament (see paragraph 38).

65. As a courtesy, it is also helpful to Committees to have their attention drawn to Ministerial announcements which relate to their remit, even if not the subject of a current inquiry. In order to be as helpful as possible, Departments should provide Departmental Select Committees with copies of written Ministerial Statements, White Papers and consultation documents in which the Committee might be expected to have an interest.

4B. PROVISION OF INFORMATION

General

66. Although the powers of Select Committees to send for "persons, papers and records" relating to their field of enquiry are unqualified, there are certain long-standing conventions on the provision of information which have been observed in practice by successive administrations on grounds of public policy.

67. The Government is committed to being as open and as helpful as possible with Select Committees. The presumption is that requests for information from Select Committees will be agreed to. Where a Department feels that it cannot meet a Committee's request for information, it should make clear its reasons for doing so, if appropriate in terms similar to those in the Freedom of Information Act (without resorting to explicit reference to the Act itself or to section numbers). If the problem lies with disclosing information in open evidence sessions or in memoranda submitted for publication, Departments will wish to consider whether the information requested could be provided on a confidential basis. These procedures are described in paragraphs 84 to 91 below.

Excessive Cost

68. Although the provisions under the Code for charging applicants do not apply in the case of Select Committees, it may occasionally prove necessary to decline requests for information which would involve the Department in excessive cost or diversion of effort. Ministers should always be consulted on their priorities in such cases.

69. Requests for named officials who are serving overseas to attend to give evidence should not be refused on cost grounds alone if the official concerned is the person best placed to represent the Minister. Committees will generally be willing to arrange for such witnesses to give evidence on a mutually acceptable date. Evidence by video link is an alternative that should also be explored with the Committee.

Matters which may be *sub judice*

70. Committees are subject to the same rules by which the House regulates its conduct in relation to matters awaiting the adjudication of the courts (although the bar on debating such matters may be lifted if a Committee is meeting in closed session). If a matter already before the courts is likely to come up for discussion before a Committee at a public session, the Clerk will usually be aware of this and will draw the attention of the Chairman to the relevant rules of the House. Nonetheless, if a Department has reason to believe that such matters may arise, the Liaison Officer may wish to check with the Clerk that the Committee is also aware. It should be noted, however, that the Committee Chairman has an overriding discretion to determine what is appropriate in the hearing of evidence.

71. Officials should take care in discussing or giving written evidence on matters which may become the subject of litigation but which, at the time, do not strictly come under the rules precluding public discussion of sub judice questions. Such caution should be exercised whether or not the Crown is likely to be a party to such litigation. If such matters seem likely to be raised, officials should first consult their departmental legal advisers or the Treasury Solicitor on how to handle questions which might arise. In any case of doubt about the extent to which details may be disclosed of criminal cases, not currently sub judice, the Law Officers are available for consultation. Similar considerations apply in cases where a Minister has or may have a quasi-judicial or appellate function, for example in relation to planning applications and appeals.

Conduct of Individual Officials

72. Occasionally questions from a Select Committee may appear to be directed to the conduct of individual officials, not just in the sense of establishing the facts about what occurred in making decisions or implementing Government policies, but with the implication of allocating individual criticism or blame.

73. In such circumstances, and in accordance with the principles of Ministerial accountability, it is for the Minister to look into the matter and if necessary to institute a formal inquiry. Such an inquiry into the conduct and behaviour of individual officials and consideration of disciplinary action is properly carried out within the Department according to established procedures designed and agreed for the purpose, and with appropriate safeguards for the individual. It is then the Minister's responsibility to inform the Committee of what has happened, and of what has been done to put the matter right and to prevent a recurrence. Evidence to a Select Committee on this should be given not by the official or officials concerned, but by the Minister or by a senior official designated by the Minister to give such evidence on the Minister's behalf.

74. In this context, Departments should adhere to the principle that disciplinary and employment matters are a matter of confidence and trust (extending in law beyond the end of employment). In such circumstances, public disclosure may damage an individual's reputation without that individual having the same "natural justice" right of response which is recognised by other forms of tribunal or inquiry. Any public information should therefore be cast as far as possible in ways which do not reveal individual or identifiable details. Where Committees need

such details to discharge their responsibilities, they should be offered in closed session and on an understanding of confidentiality. Evidence on such matters should normally be given on the basis that:

- (a) information will not be given about Departmental disciplinary proceedings until the hearings are complete;
- (b) when hearings have been completed, the Department will inform the Committee of the outcome in a form which protects the identity of the individual or individuals concerned except insofar as this is already public knowledge;
- (c) where more detail is needed to enable the Committee to discharge its responsibilities, such detail will be given but on the basis of a clear understanding of its confidentiality;
- (d) the Committee will thereafter be given an account of the measures taken to put right what went wrong and to prevent a repeat of any failures which have arisen from weaknesses in the Departmental arrangements.

75. Select Committees have agreed that it is not their task to act as disciplinary tribunals. Accordingly, if in the course of an inquiry a Select Committee were to discover evidence that called into question the conduct (in this sense) of individual named officials, the Committee should be asked not to pursue their own investigation into the conduct of the person concerned, but to take up the matter with the Minister.

76. If it is foreseen that a Select Committee's line of enquiry may involve questions about the conduct of named officials, it should be suggested to the Committee that it would be appropriate for a Minister or a senior official designated by the Minister to give evidence, rather than the named officials in question. If an official giving evidence to a Committee is unexpectedly asked questions which are directed at his or her individual conduct, or at the conduct of another named official, the official should indicate that he or she wishes to seek instructions from Ministers, and the Committee should be asked to allow time for this.

77. A recent extreme example of the House of Lords setting up a Committee with an explicit remit to inquire into the conduct of specific individuals, and to revisit the findings of a departmental tribunal, is provided by the Chinook ZD 576 inquiry in 2001. This was wholly exceptional.

Papers of a Previous Administration

78. There are well established conventions which govern the withholding of policy papers of a previous Administration from an Administration of a different political complexion. These were set out in a Parliamentary answer from the Prime Minister on 24 January 1980 (Official Report, Columns 305—307). Since officials appear before Select Committees as representatives of their Ministers, and since Select Committees are themselves composed on a bipartisan basis, it

follows that officials should not provide a Committee with evidence from papers of a previous Administration which they are not in a position to show to their present Ministers. If such evidence is sought, Ministers should be consulted. Where Ministers propose to make an exception, it would be necessary to consult a representative of the previous Administration before either showing the papers to present Ministers or, with Ministers' authority, releasing information from them to a Committee.

4C. STATUS AND HANDLING OF EVIDENCE

Status of Evidence

House of Commons

79. Once information has been supplied to a Committee it becomes "evidence" and, subject to any agreement with the Committee on the non-publication of protectively marked information (paragraphs 84-91), it is entirely up to the Committee whether or not to publish it and report it to the House. Certain rules apply to the further public use of such evidence by the Government prior to its publication by the Committee. Departments should be careful to observe these rules as failure to do so could amount to a breach of Parliamentary privilege. Committees are usually helpfully flexible in applying the rules but, in cases of doubt, Departments should consult the relevant Committee Clerk for guidance.

80. The basic rule is a Commons resolution of 1837 which states that "...the evidence taken by any Select Committee of this House, and Documents presented to such Committee, and which have not been reported to the House, ought not to be published by any Member of such Committee or any person". This Resolution still stands but is now subject to important modifications which give Committees power to authorise witnesses to publish the memoranda of evidence they have submitted (Commons Standing Order No. 135) and which permit the publication of evidence given in public session before it is formally reported to the House (Commons Standing Order No. 136). Many Committees now agree to a resolution giving permission to witnesses to publish their evidence, either generally or in respect of a specific inquiry.

81. The practical implications of these rules for Departments are as follows:

Oral evidence given in public session. There is no constraint on Departments using or repeating the substance of material given in public evidence sessions but verbatim transcripts of oral evidence (advance proof copies of which will be sent by the Clerk to Departments for checking) should not be copied to third parties until they have been published by the Committee. Uncorrected transcripts are now normally published on the Parliament website within a few days of the evidence session.

Oral evidence given in closed session. Evidence given in closed sessions should not be

disclosed by Departments before the evidence (sidelined as appropriate) has been published by the Committee. Departments will not, of course, want to disclose the sidelined passages of their evidence to third parties in any event.

Unclassified memoranda. Memoranda provided in advance of an oral evidence session are usually published on the internet with the transcript of the oral evidence, and in due course with the Committee's report. Once they have been published, Departments are free to make copies available to third parties. If a Department wishes to make copies of their submitted memoranda available to third parties in advance of this, they must first obtain the permission of the Committee. The Committee itself will usually make copies available to the media at the time of the evidence session but Liaison Officers may wish to check this with the Clerk and brief their Press Office accordingly.

Classified (protectively marked) memoranda. Similar rules apply, but naturally with the same caveat as for oral evidence given in closed session.

House of Lords

82. House of Lords Committees treat evidence in a quite different way. Once received by the Committee, it is treated as being in the public domain unless other arrangements have been made. It may be reproduced freely, provided the fact that it was originally prepared for the Committee is acknowledged.

Comment on Evidence from other Witnesses

83. Evidence critical of a Department may be given in public session by witnesses outside the Department. This may prompt questions to the department by the media or others. Departments can of course respond to such questions. Departments may also wish to explore with the Clerk whether it would be appropriate to submit further evidence setting out the Department's position.

Providing Sensitive Information in Confidence

84. It is to the benefit of Committees in carrying out their task of scrutinising Government activities, and to Government in explaining its actions and policies, for sensitive information, including that carrying a protective security marking, to be provided from time to time on the basis that it will not be published and will be treated in confidence. Procedures have been developed to accommodate this.

85. When this arises, the Department should inform the Clerk that the information in question can be made available only on this basis, explaining the reasons in general terms. Such information should not be made available until the Committee has agreed to handle it appropriately, either by treating it wholly in confidence or by agreeing to publish it with a

reasonable degree of sidelining (i.e. with the relevant passages omitted but with the location of the omissions indicated). It is important when submitting such information to make clear that the papers are provided in confidence and are not for publication. Information provided to Committees in confidence will be covered by Parliamentary privilege, and therefore will be exempt from release under FOI, but they will eventually be considered for release under the 30 year rule. In cases of particular sensitivity, Departments may wish to register a wish to be consulted before release. It should be appreciated, however, that once evidence is given to a Committee, whether in confidence or not, it becomes the property of the Committee, to deal with as it thinks fit.

Handling of Sensitive Information in Oral Evidence

86. It would clearly be inappropriate for any evidence which a Department wished to be treated as confidential to be given at a public session of the Committee. If it appears likely, therefore, that subjects to be discussed at a forthcoming public session are such that the witnesses would only be able to give substantive answers in confidence, the Department should discuss this with the Chairman or the Clerk. The Committee may then agree to take that part of the Department's evidence in closed session.

87. If, despite such an approach, a Committee questions an official witness in public session on confidential matters, or if such matters are raised unexpectedly, the official should inform the Committee that the questions could only be answered on a confidential basis. The Committee may then decide to go into closed session or request a confidential memorandum. It is not for the witness to suggest that the Committee should go into closed session as this is wholly a matter for the Committee to decide.

88. Where evidence has been given in a closed sitting, the transcript of that session is handled differently from the transcript of a public session. It will not, of course, be published on the internet in uncorrected form. Neither is it circulated to Members of the Committee or other prospective witnesses, although it will be available for inspection by Members of the Committee in the Committee Office in the same way as a classified document (see paragraph 91). A hard copy of the transcript will be provided to the Department. On it the Department should insert its corrections and indicate which passages of the evidence should be sidelined (ie contain sensitive information which it would not be in the public interest to publish). If any of the information is classified, the level of classification should be clearly marked. The copy should then be returned to the Committee.

89. Although Committees usually respect such requests for sidelining, they may occasionally challenge a particular request. Witnesses should therefore bear in mind when providing confidential memoranda, or in giving evidence in private, that their evidence may be published unless there is a clear justification for sidelining. This justification will be expected to relate to the reasons given by the Department, in the first place, for holding the evidence in private. The final decision on publication rests with the Committee.

Handling of Sensitive Information in Written Evidence

90. Where information is submitted to a Committee on the understanding that it will be kept confidential, this understanding should be recorded in the covering letter forwarding the evidence to the Clerk. The letter should make clear whether the whole memorandum or, as is often the case, particular sections are to be kept confidential. If the information is classified, the level of classification should be clearly marked. The confidentiality of the papers will be taken into account when the information is being considered for disposal in future years.

91. Agreement has been reached with the Liaison Committee on the conditions under which classified information may be disclosed to Select Committees. The key points are as follows:

- Classified information will be provided to Committees where the request is reasonable and relates to the work of the Committee. The release of TOP SECRET information under these arrangements is subject to the personal approval of the responsible Minister in each case. Classification is not of itself sufficient reason to withhold information from a select committee.
- All classified documents will be kept under secure conditions in the Committee Office, where they may be inspected by Members. With the agreement of the Department copies of a 'restricted' document may be circulated to Members.
- Where classified documents are required for meetings of the Committee (either deliberative or evidence in private), numbered copies may be made for each Member, but will be handed back on conclusion of the meeting.
- Additional arrangements may be agreed between a Departments and the relevant Committee.

4D. EVIDENCE FROM OTHER BODIES

92. Committees may, as stated in paragraph 22-23 above, investigate and call for evidence from "associated public bodies" for which Departments have responsibility. If a Department becomes aware that one of its NDPBs (or related bodies) has been invited to give evidence, it should consider whether it would be helpful to the body to discuss possible lines of questioning with the witnesses before the hearing. Departments must, however, be careful not to exercise undue influence over NDPBs in relation to their evidence. Any such action might be regarded as a contempt of the House, with potentially serious consequences for those involved. If the Department has already given evidence to the Committee, it may also wish to consider whether, in the light of the evidence given by the NDPB, it should seek to submit further oral or written evidence. Further oral evidence is, of course, a matter entirely at the discretion of the Committee.

93. Committees may occasionally call for evidence from commercial companies, particularly those handling Government contracts. Ministers remain accountable to Parliament and the public

for the functions provided by contractors. There should be no loss of transparency as to the quality and effectiveness of services delivered. Nor should there be any relaxation in the protection of private and sensitive third party information handled by contractors. There may also be a need in the public interest to preserve commercial confidentiality to protect the business interests of competing companies and to protect the position of Departments and the public purse in current or future tendering activity.

94. Government contracts will very often specify the contractor's obligations both to provide appropriate information to the public (under the Government's policies on openness) and to give necessary protection to confidential and sensitive information. Where contractors are prohibited from providing access without written consent to the details of Government contracts, Departments may find it helpful to discuss with their contractors how they can best provide a Committee with a general picture of their work without going into the commercially sensitive details of specific contracts.

95. The normal relationships between Departments and their associated public bodies or with commercial contractors should usually be sufficient to ensure an awareness on the part of witnesses from such organisations of the need to deal with Committee's questions in accordance with the rules about protecting classified information. Departments may, however, wish to remind witnesses of these rules, and the options for providing sidelined evidence, before the hearing.

96. Where Departments and associated public bodies have consulted one another, or a commercial contractor, prior to the submission of a memorandum to a Committee, the memorandum should, in accordance with a recommendation of the Procedure Committee, include a note of the persons or organisations that have been consulted.

SECTION 5: GOVERNMENT RESPONSES TO SELECT COMMITTEE REPORTS

Leaked Select Committee Reports

97. If a civil servant (or a Minister) receives a copy of a leaked Select Committee report, he or she must not make any use of it or circulate it any further. The report should be returned immediately to the Clerk of the relevant Select Committee. No copies should be taken.

Publication of Committee Reports

98. Select Committee Reports are made formally to the House rather than to the Government although, given their subject matter, most of the recommendations tend to be addressed to the Government.

99. Under the terms of House of Commons Standing Order No 134, interested Departments and the media will normally receive embargoed copies of Select Committee Reports up to forty-eight hours before publication. While Committees are usually helpful over this, such advance issue is at their discretion and Departments cannot insist on seeing copies. If publication of a Report is known to be imminent, Departments may wish to contact the Clerk on an informal basis to establish the likely timetable.

Briefing No 10 and other Departments on Forthcoming Committee Reports

100. As soon as possible after an embargoed copy of a Committee Report is received, a short note (not more than two or three pages) should be prepared on the main points, especially difficult points, with brief lines to take where necessary (bearing in mind the guidance on immediate comments on Reports at paragraphs 103-106). This should be faxed to the Parliamentary Clerk at No 10 to arrive before publication of the Report concerned. In the event of a Department receiving the Report only on the day of publication, a short note should still be put urgently in hand to reach No 10 on the same day. Copies of the briefing should go in parallel to other Departments with an interest in the Report. This requirement stands for Reports published during the recess as well as when Parliament is sitting.

Preparation of Press briefing

101. Receipt of an embargoed copy of a Select Committee report also enables Departments to prepare briefing for use by Ministers and press offices for comment on the Report as soon as it published. Such immediate comment is, however, subject to certain rules and conventions and should avoid giving instant conclusions on recommendations in Committee Reports before there has been time to consider them carefully. The briefing may consist of a Press Notice, issued to coincide with publication of the Report, or simply of material for the Departmental Press Office to use in response to enquiries. In either case it should be borne in mind that journalists will be working on their embargoed copies to a similar timetable so that media enquiries may arise almost as soon as these copies are available. Any information provided should be subject at least

to the same embargo date as that of the Committee's report.

102. Where a Select Committee Report concerns more than one Department, the Department with the major interest should co-ordinate the Press briefing, though Press enquiries may be answered by the other Departments concerned on the agreed lines.

Immediate Comment on Committee Reports

103. The basic principle in giving immediate comment on Committee Reports is that Departments should be careful not to pre-empt or prejudice the Government's final and considered reply to the Committee's recommendations which must first be given to Parliament. This means that comments given to the media or in other statements, especially outside the House, on publication of the Report, or in the intervening period up to the delivery of the Government's reply, should not seem to anticipate that reply.

104. The Government's position on these conventions was set out in a letter of 5 June 1990 from the then Lord President of the Council to the Chairman of the Liaison Committee.

This:

(a) reaffirmed the convention that Departments may respond immediately in order to correct mis-statements of fact, to provide background information, or to draw attention to particular passages in the Committee's Report or in the published Government evidence the Committee;

(b) asserted the right of Ministers to respond publicly to criticisms of the Government as robustly as seemed appropriate; this would include criticisms in the Committee's Report itself, inaccuracy or mis-statement in media reporting, or public criticisms made by individual Committee members;

(c) confirmed that it was not the Government's intention that recommendations in Committee Reports should be subject to snap responses without detailed Government assessment. Nonetheless Ministers would feel free to respond immediately to certain recommendations, either positively or negatively, where the Government's policy was established and clear, or where an early response was needed in order to influence fast-moving events.

Immediate Comment on NAO and PAC Reports

105. Similar considerations apply to immediate comment on Reports from the Committee of Public Accounts (PAC). In the case of Reports to the PAC from the National Audit Office (NAO), it is important that immediate comment should not pre-empt any subsequent PAC hearing with the Department's Accounting Officer. Comment should therefore be confined to quoting or amplifying material contained in the NAO Report itself (including expressions of departmental views), providing relevant information and correcting any mis-statements of fact or interpretation in media coverage. Any comments in these circumstances should also observe the

1968 Treasury undertaking to the PAC that immediate comment would not be controversial; but this need not preclude straightforward factual correction of media reporting.

106. Departments' public comments on NAO and PAC Reports which have financial implications, or which might affect substantively the subsequent Treasury Minute, should be cleared first with the relevant Treasury expenditure division.

Timing of Government Response to Committee Reports

107. Departments should aim to provide the considered Government response to a Commons Select Committee Report within two months of its publication, as recommended by the Procedure Committee. Written responses to Lords Committees must be provided within two months for the EU Committee, six months for all others. In the case of Joint Committees, the two month target should apply, unless a longer timetable is agreed with the Committee.

108. The two month target may not always be possible to achieve as Committee Reports tend to address issues which require consideration in depth and this may involve consultation both within and outside Government before a substantial reply can be provided. If it appears that preparing a response is going to take longer than it should, the Department should write to the Committee (at Ministerial level to the Chairman or at official level to the Clerk) explaining the reasons and indicating the likely timetable. Only in exceptional circumstances should a response be deferred for more than six months after the Report's publication. A further option is to provide an interim response within the set period and a fuller response at a later date.

109. If these deadlines mean that a response falls due in the summer recess, the Committee may prefer publication of the Government response to be held over until Parliament reconvenes. Liaison Officers should consult the Clerk on the Committee's preference.

Form of Government Response

110. In considering the form which the Government's considered response to a Select Committee Report should take, it is important to remember that the response must in all circumstances be made first to Parliament, either to the House itself or to the Committee. Replies usually take one of the following forms: (a) a Command Paper presented to Parliament; (b) a Memorandum or a letter to the Chairman of the Committee; or (c) an Oral Statement.

111. Replies in the form of (a) or (b) may be made in conjunction with an oral or written ministerial statement; but the Government has agreed that formal replies to Select Committee reports will not be made by means of written PQ answers alone.

112. Where a Select Committee's recommendations concern another public body as well, that body may reply direct to the Committee or its reply may be annexed to the Government's response as appropriate.

(a) Command Paper

This is the traditional form of reply on matters of substance and is addressed to Parliament as a whole, rather than directly to the Committee.

Arrangements should be made where appropriate for collective Ministerial consideration and cleared through the relevant Cabinet Committee. Collective Ministerial agreement is likely to be required if the response touches on the responsibility of other Government Departments or is otherwise likely to be politically controversial.

Where several Departments are concerned, the Command Paper may be issued either by the principal Minister concerned, or by several Ministers acting jointly. Replies to Reports of the Committee of Public Accounts are always collated and presented by the Treasury.

Advance copies of any Command Paper responding to a Select Committee Report should be made available to the Committee concerned up to forty-eight hours before publication (the counterpart of the arrangement described in paragraph 99). Committees also find it helpful to be advised informally, where possible, when a reply is imminent. Advance copies may also be made available to the media. These should normally be provided on the day of publication. Any proposal to provide copies to the media more than 24 hours in advance must be cleared with No 10.

One advance copy of the final Command Paper for each Committee member and the Clerk should be provided by the Department, free of charge. If significantly more copies are required, the Clerk should be advised to obtain these from the publisher in the usual way (see paragraph 37).

(b) Memorandum or Letter to the Committee

A Memorandum by a Department to the Committee, or a letter from a Minister to the Chairman may be a more readily applicable form of response to less substantial recommendations. Unlike a Command Paper, such responses are, formally, further evidence to the Committee and are therefore subject to the usual conventions on submitted evidence (see paragraphs 79-82). The Committee will normally decide to publish such Government responses itself, either without comment or with a further commentary on the points made in the response. Alternatively, Committees may, on request, agree to publication by the Department. This is usually done by the Department placing a copy of the reply in the House Library and drawing attention to it by means of a written ministerial statement.

(c) Oral Statement

If the Government's response is made in an oral statement on the floor of the House, whether in a separate statement or as part of a wider Ministerial speech, the Department

should write to the Committee as early as possible drawing their attention to the statement and, if appropriate, making it clear that no further written reply is envisaged.

Responses to Reports from ad hoc Committees

113. The existence of an ad hoc Committee may end with the making of its report. In these circumstances, the Government response should be in the form of a Command Paper. The Clerk of the former Committee should be kept informed, as for an existing Committee, and copies should be provided for the members of the former Committee.

114. There is no obligation to reply individually to every point made by a Committee: some may be general pronouncements or observations: some may be directed not to the Government but to the House itself (for example, certain recommendations of the Procedure Committee) or to other bodies; some may conveniently be dealt with in one omnibus comment. A report may also contain observations by the Committee which, while not in the form of a recommendation, may nonetheless warrant a response or statement of the Government's views.

115. In the period between publication of a Committee's Report and the formal Government reply, there need be no constraint on Departments taking action on its recommendations. However, if such action is taken the Committee should be informed, a Parliamentary announcement should be considered, and in any event the formal Government response to the Committee should refer to the action taken (see also paragraphs 64-65 on Ministerial statements). Similarly, if a decision on a recommendation is made, or if a recommendation is implemented some time after the formal reply has been given, the Department should write to the Committee to make them aware of the fact.

116. A copy of all Government replies to Committee recommendations, in whatever form, should be sent to the Leader of the House of Commons or to the Leader of the House of Lords as appropriate.

ANNEX A

HOUSE OF COMMONS STANDING ORDER NO. 152

Select Committees Related to Government Department

(1) Select Committees shall be appointed to examine the expenditure, administration and policy of the principal government departments as set out in paragraph (2) of this Order and associated public bodies.

(2) The committees appointed under paragraph (1) of this Order, the principal departments of government with which they are concerned and the maximum numbers of each committee shall be as follows:

Name of Committee	Principal government departments concerned	Maximum members
1. Constitutional Affairs	Department for Constitutional Affairs (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland)	11
2. Culture, Media and Sport	Department for Culture, Media and Sport	11
3. Defence	Ministry of Defence	11
4. Education and Skills	Department for Education and Skills	11
5. Environment, Food and Rural Affairs	Department for Environment, Food and Rural Affairs	17
6. Foreign Affairs	Foreign and Commonwealth Office	11
7. Health	Department of Health	11
8. Home Affairs	Home Office; and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers)	11
9. International Development	Department for International Development	11
10. Northern Ireland Affairs	Northern Ireland Office; administration and expenditure of the Crown Solicitor's Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).	13
11. Office of the Deputy Prime Minister: Housing, Planning, Local Government and	Office of the Deputy Prime Minister	11

the Regions		
12. Science and Technology	Office of Science and Technology	11
13. Scottish Affairs	Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General))	11
14. Trade and Industry	Department of Trade and Industry (but excluding the Office of Science and Technology)	11
15. Transport	Department for Transport	11
16. Treasury	Treasury, Board of Inland Revenue, Board of Customs & Excise	11
17. Welsh Affairs	Wales Office (including relations with the National Assembly for Wales)	11
18. Work and Pensions	Department for Work and Pensions	11

(3) Each Select Committee appointed under this order shall have the power to appoint a sub-committee, and the Environment, Food and Rural Affairs Committee shall have power to appoint two sub-committees.

(4) Select Committees appointed under this order shall have power-

- (a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;
- (b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference; and
- (c) to report from time to time the minutes of evidence taken before sub-committees, and to lay upon the Table of the House the minutes of the proceedings of sub-committees;

and the sub-committees appointed under this order shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, to report from time to time the minutes of their proceedings, and shall have a quorum of three.

(5) Unless the House otherwise orders, all Members nominated to a committee appointed under this order shall continue to be members of that committee for the remainder of the Parliament.

PREM49/4236

ANNEX

- Excluding bound
'Ministerial Code'
booklet.



MINISTERIAL CODE

A code of conduct and guidance on procedures for Ministers

CABINET OFFICE
JULY 2001

Ministerial Code

A Code Of Conduct And Guidance On Procedures For Ministers

Foreword By

The Prime Minister

In issuing this Code, I should like to reaffirm my strong personal commitment to the bond of trust between the British people and their Government. We are all here to serve and we must all serve honestly and in the interests of those who gave us our positions of trust.

I will expect all Ministers to work within the letter and spirit of the Code. Ministers will find it a useful source of guidance and reference as they undertake their official duties in a way that upholds the highest standards of propriety.

I believe we should be absolutely clear about how Ministers should account, and be held to account, by Parliament and the public. The first section of the Code sets out these responsibilities clearly, following the terms of the House of Commons Resolution on Ministerial Accountability carried in March 1997.

I commend the Code to all of my Ministerial colleagues.

TONY BLAIR

MINISTERIAL CODE

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ANNEX: THE SEVEN PRINCIPLES OF PUBLIC LIFE

1. MINISTERS OF THE CROWN

Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties.

This Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards. It lists the principles which may apply in particular situations drawing on past precedent. It applies to all members of the Government (and covers Parliamentary Private Secretaries in section 4).

Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct in Parliament. The Code is not a rulebook, and it is not the role of the Secretary of the Cabinet or other officials to enforce it or to investigate Ministers although they may provide Ministers with private advice on matters which it covers.

Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards, although he will not expect to comment on every allegation that is brought to his attention.

The Code should be read against the background of the overarching duty on Ministers to comply with the law, including international law and treaty obligations, to uphold the administration of justice and to protect the integrity of public life. They are expected to observe the Seven Principles of Public Life set out in the first report of the Nolan Committee, repeated in annex A, and the following principles of Ministerial conduct:

- i. Ministers must uphold the principle of collective responsibility;
- ii. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and 'next steps' agencies;
- iii. it is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead

Parliament will be expected to offer their resignation to the Prime Minister;

iv. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest which should be decided in accordance with the relevant statutes and the Government's Code of Practice on Access to Government Information;

v. Ministers should similarly require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;

vi. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

vii. Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;

viii. Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;

ix. Ministers must not use government resources for Party political purposes. They must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code.

Ministers must also comply at all times with the requirements which Parliament itself has laid down. For Ministers in the Commons, these are set by the Resolution carried on 19 March 1997 (Official Report columns 1046-47), the terms of which are repeated at ii. to v. above. For Ministers in the Lords the Resolution can be found in the Official Report of 20 March 1997 column 1057.

2. MINISTERS AND THE GOVERNMENT

Attendance at meetings of the Privy Council

2. Once a Minister has accepted a Summons to a meeting of the Privy Council this should take precedence over all other engagements. If a Minister is subsequently unable to attend because of illness, or an inescapable public duty, the Clerk of the Council must be informed immediately. If a Minister has a meeting immediately before a Council, the agenda should be arranged to leave ample time to reach the Palace. In no circumstances is it permissible for a Minister not to attend because an earlier meeting has overrun its time. The failure of a Minister to attend a Council after a summons has been accepted is not only discourteous to The Queen but could result in no quorum being present to transact essential Government business.

Cabinet and Ministerial Committee business

3. The business of the Cabinet and Ministerial Committees consists in the main of:

- a. questions which significantly engage the collective responsibility of the Government because they raise major issues of policy or because they are of critical importance to the public;
- b. questions on which there is an unresolved argument between Departments.

Matters wholly within the responsibility of a single Minister and which do not significantly engage collective responsibility as defined above need not be brought to the Cabinet or to a Ministerial Committee unless the Minister wishes to inform his colleagues or to have their advice. A precise definition of such matters cannot be given: in borderline cases a Minister is advised to seek collective consideration. Questions involving more than one Department should be examined interdepartmentally, before submission to a Ministerial Committee, so that the decisions required may be clearly defined.

Ministerial Committees

4. The Cabinet is supported by Ministerial Committees (both standing and ad hoc) which have a two-fold purpose. First, they relieve the pressure on the Cabinet itself by settling as much business as possible at a lower level or, failing that, by clarifying the issues and defining the points of disagreement. Second, they support the principle of collective responsibility by ensuring that, even though an important question may never reach the Cabinet itself, the decision will be fully considered and the final judgement will be sufficiently authoritative to ensure that the Government as a whole can be properly expected to accept responsibility for it.

When there is a difference between Departments, it should not be referred to the Cabinet until other means of resolving it have been exhausted, including personal correspondence or discussions between the Ministers concerned.

5. If the Ministerial Committee system is to function effectively, appeals to the Cabinet must be infrequent. Those who chair Committees are required to exercise their discretion in advising the Prime Minister whether to allow them. The only automatic right of appeal is if Treasury Ministers are unwilling to accept expenditure as a charge on the reserve; otherwise the Prime Minister will entertain appeals to the Cabinet only after consultation with the Minister who chairs the Committee concerned. Departmental Ministers should normally attend in person meetings of Committees of which they are members or to which they are invited. Unless they make it possible for their colleagues to discuss with them personally issues which they consider to be important, they cannot - except where their absence is due to factors outside their control - expect the Prime Minister to allow an appeal against an adverse decision taken in their absence.

The priority of Cabinet meetings

6. Cabinet meetings take precedence over all other business except meetings of the Privy Council, although it is understood that Ministers may occasionally have to be absent for reasons of Parliamentary business. Requests by Cabinet Ministers for permission to be absent should be made only in the most exceptional circumstances, and should be made at the earliest opportunity and in writing to the Prime Minister, copied to the Secretary of the Cabinet. A minute is not necessary when the reason for absence from Cabinet is an overseas visit for which the Prime Minister's approval has already been obtained. As is indicated in paragraph 73(a) below, a copy of the letter seeking the Prime Minister's approval for the overseas visit or absence for any other reason should be sent to the Secretary of the Cabinet. (See paragraph 5 above for attendance at Cabinet Committees.)

7. In order not to disturb the proceedings of the Cabinet and Ministerial Committees, Ministers should see that messages are not sent to them during meetings unless this is absolutely essential. A Minister invited to attend for a particular item will be called into the meeting by the Prime Minister's Private Secretary (or the Secretary of the Committee) as soon as the item for which he or she is required has been reached.

Preparation of business for Cabinet and Ministerial Committees

8. Guidelines on the conduct of Cabinet and Ministerial Committee business are set out in *Cabinet Committee Business* published by the Cabinet Office. In all cases the Secretary should be given at least seven days' notice of any business likely to require

substantive policy discussion (including business to be raised orally) which a Minister wishes to bring before the Cabinet or a Committee. Memoranda should be circulated in sufficient time to enable Ministers to read and digest them, and to be properly briefed. Memoranda for Cabinet and Ministerial Committees should be circulated at least two full working days and a weekend in advance of the meeting at which they are to be discussed. If decisions are urgently required, and an interval including a weekend is not possible, memoranda should be circulated as long before a meeting as possible, and at least two full working days before they are to be discussed. Where a Minister wishes to advise Cabinet of an issue on which no substantive policy discussion is expected, the Private Office should alert the Secretary of the Cabinet in the morning of the day before Cabinet.

9. Ministers' Private Secretaries can help the Secretary by indicating where Ministers other than members of the Cabinet are likely to be concerned with a subject, so that arrangements may be made for their attendance.

10. It is the responsibility of the initiating Department to ensure that proposals have been discussed with other interested Departments and the results of these discussions reflected in the memorandum submitted to Cabinet or a Ministerial Committee. Proposals involving expenditure or affecting general financial policy should be discussed with the Treasury before being submitted to the Cabinet or a Ministerial Committee. The result of the discussion together with an estimate of the cost to the Exchequer (or estimates, including the Treasury's estimate, if the Department and the Treasury disagree) should be included, along with an indication of how the cost would be met (eg by offsetting savings). The estimate of the cost should identify any impact on other Departments. The list of other Departments to be consulted will depend on the proposal but, as a general guide, proposals involving legal implications, especially if there is a risk of successful legal challenge, should be cleared with the Law Officers. The Scottish Office, Northern Ireland Office and Welsh Office must be consulted where proposals have implications for their areas of responsibility. Memoranda should also include a Regulatory Impact Assessment; confirmation that the European Law Checklist has been followed if European requirements are being implemented; any significant costs or benefits to the environment; any change in local government responsibilities; consequences for European Union, European Court of Human Rights and other international obligations; and presentational aspects including, where appropriate, a draft statement or announcement. If, exceptionally, papers are circulated as minutes addressed to the Prime Minister, they are subject to the same

requirements.

11. These rules do not limit the right of Ministers to submit to the Cabinet memoranda setting out their views on general issues of policy.

12. Memoranda for the Cabinet and Committees of the Cabinet should be as clear and as brief as possible. They should not normally exceed four pages at most, and the Cabinet Office may not accept an over-long memorandum for circulation. Time spent in making a paper short and clear is saved many times over in reading and in discussion; and it is the duty of Ministers to ensure that this is done and that, where necessary, papers submitted to them are revised accordingly. The model memorandum explains at the outset what the problem is, indicates briefly the relevant considerations, and concludes with a precise statement of the decisions sought. Paragraphs should be numbered for ease of reference. Detailed analysis and argument, together with supplementary detail, should be dealt with, where necessary, in annexes.

**Cabinet Conclusions
and Ministerial
Committee minutes**

13. The record of Cabinet and Committee proceedings is limited to the conclusions reached and such summary of the discussion as is necessary for the guidance of those who have to take action. The Cabinet Office are instructed to avoid, so far as practicable, recording the opinions expressed by particular Ministers. Matters of special secrecy or political sensitivity may be recorded in a limited circulation annex.

14. Any suggestions for amendment of Cabinet Conclusions or Committee minutes must reach the Secretary not later than 24 hours after the circulation of the minutes.

15. Ministers are responsible for instructing their Departments to give effect to the conclusions of the Cabinet or of one of its Committees, and for telling subordinate Departments or branches about decisions affecting them. When immediate action is required by a Department not represented at the meeting, the Secretary will ensure that the Department concerned is notified forthwith. Where urgent action has to be taken by a Department, the Department may ask the Secretary for an advance copy of the relevant conclusions.

**Collective
responsibility**

16. The internal process through which a decision has been made, or the level of Committee by which it was taken, should not be disclosed. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the Government. They are, however, normally announced and explained as the decision of

the Minister concerned. On occasions it may be desirable to emphasise the importance of a decision by stating specially that it is the decision of Her Majesty's Government. This, however, is the exception rather than the rule.

17. Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees should be maintained. Moreover Cabinet and Committee documents will often contain information which needs to be protected in the public interest. It is therefore essential that, subject to the guidelines on the disclosure of information set out in the Code of Practice on Access to Government Information, Ministers take the necessary steps to ensure that they and their staff preserve the privacy of Cabinet business and protect the security of Government documents.

18. The principle of collective responsibility and the need to safeguard national security, relations with other countries and the confidential nature of discussions between Ministers and their civil servants impose certain obligations on former Ministers who are contemplating the publication of material based upon their recollection of the conduct of Government business in which they took part. They are required to submit their manuscript to the Secretary of the Cabinet and to conform to the principles set out in the Radcliffe Report of 1976 (Cmnd 6386) (see also paragraph 107).

Cabinet documents

19. Ministers relinquishing office without a change of Government should hand over to their successors those Cabinet documents required for current administration and should ensure that all others have been destroyed. Former Ministers may at any time, and subject to undertakings to observe the conventions governing Ministerial memoirs, have access in the Cabinet Office to copies of Cabinet or Ministerial Committee papers issued to them while in office.

20. On a change of Government, the outgoing Prime Minister issues special instructions about the disposal of the Cabinet papers of the outgoing Administration.

21. Some Ministers have thought it wise to make provision in their wills against the improper disposal of any official or Government documents which they might have retained in their possession by oversight.

The Law Officers

22. The Law Officers must be consulted in good time before the Government is committed to critical decisions involving legal considerations. It will normally be appropriate to consult the Law Officers in cases where:

a the legal consequences of action by the Government might have important repercussions in the foreign, European Union or domestic field;

b. a Departmental Legal Adviser is in doubt concerning

(i) the legality or constitutional propriety of legislation which Government proposes to introduce; or

(ii) the vires of proposed subordinate legislation; or

(iii) the legality of proposed administrative action, particularly where that action might be subject to challenge in the courts by means of application for judicial review;

c. Ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations, which are likely to come before the Cabinet or Cabinet Committee;

d. there is a particular legal difficulty which may raise political aspects of policy;

e. two or more Departments disagree on legal questions and wish to seek the view of the Law Officers.

By convention, written opinions of the Law Officers, unlike other Ministerial papers, are generally made available to succeeding Administrations.

23. When advice from the Law Officers is included in correspondence between Ministers, or in papers for the Cabinet or Ministerial Committees, the conclusions may if necessary be summarised but, if this is done, the complete text of the advice should be attached.

24. The fact and content of opinions or advice given by the Law Officers, including the Scottish Law Officers, either individually or collectively, must not be disclosed outside

Government without their authority.

**Legal proceedings
involving Ministers**

25. Ministers occasionally become engaged in legal proceedings primarily in their personal capacities but in circumstances which may have implications for them in their official positions. Defamation is an example of an area where proceedings will invariably raise issues for the Minister's official as well as his private position. In all such cases they should consult the Law Officers before consulting their own solicitors, in order to allow the Law Officers to express a view on the handling of the case so far as the public interest is concerned or, if necessary, to take charge of the proceedings from the outset, for example, by suggesting that the conduct of the case would best be handled by the Treasury Solicitor.

26. In criminal proceedings the Law Officers act wholly independently of the Government. In civil proceedings a distinction is to be drawn between proceedings in which the Law Officers are involved in a representative capacity on behalf of the Government, and action undertaken by them on behalf of the general community to enforce the law as an end in itself.

3. MINISTERS AND PARLIAMENT

Parliamentary statements and other Government announcements

27. When Parliament is in session, Ministers will want to bear in mind the desire of Parliament that the most important announcements of Government policy should be made, in the first instance, in Parliament. Even when Government announcements are not of major importance their timing may require careful consideration in order to avoid clashes with other Government publications, statements or announcements or with the planned Parliamentary business. The Leader of the House of Commons, the Chief Whip and the No 10 Press Office should be given as long an opportunity as possible, and wherever possible at least two working days, to comment on the content and timing of all important Government announcements, whether in the form of a Written Answer or oral statement in Parliament, White Paper or press conference. Whenever possible they should also be shown the draft announcement in advance.

28. If too many announcements are made by oral statement at the end of Questions, Parliamentary business could be hindered. Nevertheless, careful consideration should be given in the case of important or particularly sensitive issues to the desirability of making an oral statement rather than an announcement by Written Answer. Ministers proposing to make a statement after Questions (whether or not it is related to a Question on the order paper) or to answer a Question by leave at the end of Questions or to make an important announcement by means of a Written Answer are therefore asked to conform with the following procedure.

- a. As much notice as possible of the intention to make an announcement should be given to (i) the Prime Minister's Private Secretary; (ii) the Private Secretary to the Leader of the House of Commons; (iii) the Private Secretary to the Chief Whip; (iv) the No 10 Press Office. This notification should indicate the broad content of the proposed announcement; if necessary, why an oral statement is thought to be appropriate; and an indication whether the policy with which it is concerned has been approved by Ministers, including references to relevant discussions in Cabinet or Cabinet Committees. If agreement in principle is given, a draft of the statement or answer should be circulated to the same recipients as soon as possible, having been approved in broad terms, though not necessarily in detail, by the Minister in charge of the Department. Draft statements or answers should be accompanied by background notes which identify the likely points of attack and suggest how these can best be met. Particular attention should be paid to the timing of Written Answers in this context. From

Monday to Wednesday an Answer to a Written Question may not be released before 3.30 pm (12.30 pm on Thursdays and 12 noon on Fridays) on the day which the Question stands on the Order paper for reply. Where earlier release is required the Question may be tabled, by agreement with the Business Managers, one day earlier, the Answer being held back until the following morning.

- b. In the case of announcements by Written Answer, particular care must be taken to avoid making a press announcement before the Written Answer has been delivered to the MP who tabled the Question.
- c. Ministers should not give undertakings, either in or outside the House of Commons, that an oral statement will be made to the House on any subject at a specific time or within a particular period until agreement has been given by the Private Secretaries to the Prime Minister, the Leader of the House of Commons and the Chief Whip, to the proposed timing and by the Ministers concerned to the terms of the statement.
- d. Ministers will be conscious of the pressures of other Parliamentary business when deciding on the timing of statements. For example, on Thursdays a considerable amount of Parliamentary time after Questions is already pre-empted by discussion of the following week's business. It is also desirable, except in special circumstances, to avoid oral statements on Fridays.
- e. Copies of the final version of such announcements should be sent to the Private Secretaries to the Prime Minister, the Leader of the House and the Chief Whip and to the No 10 Press Office as soon as they are available.
- f. A copy of the text of any oral statement to be made at the end of Questions should usually be shown to the Opposition Parties shortly before it is made. For this purpose fifteen extra copies of the final text must reach the office of the Chief Whip in the House of Commons as early as possible and in any case not later than 2.45 pm (Monday-Wednesday), 11.45 am (Thursday) or 10.15 am (Friday) on the day on which the statement is to be made.
- g. A copy of the final text of an oral statement should in all cases be sent in advance to the Speaker.
- h. The texts of oral statements should be made available in the

Vote Office as soon as the Minister responsible for making the statement stands up. However, there may be occasions when this will not be possible, for example, for reasons of market confidentiality (eg the Budget). All advance copies will be released on the assumption that Ministers can and will make changes to the statements up to and including the point when they are at the Despatch Box.

- i. Every effort must be made to ensure that where a former Minister or a Ministerial colleagues and/or a fellow MP is mentioned in a statement or report which prompts a Ministerial statement, he or she is given as much notice as is reasonably possible. The current practice is that those concerned should be given a copy of the report on the morning of the announcement.
- j. The Leader of the House of Lords should be informed of a forthcoming oral statement in the House of Commons and consulted about the desirability of repeating it in the Lords.
- k. A copy of any important Ministerial statement as actually delivered should be placed as quickly as possible in the Library of the House. This affords Members an opportunity of studying it in advance of publication in the Official Report.
- l. Every effort should be made to avoid leaving significant announcements to the last day before a Recess.

Supply of Parliamentary publications

29. A Minister in charge of an item of business in the House of Commons must ensure that reasonable numbers of copies of any documents published during the last two Sessions which may be needed for the debate are placed in the Vote Office and is responsible for supplying the House of Commons Library in advance with a list of all those older papers which the Minister considers relevant to the item. When any document is out of print the Minister should decide whether or not a reprint is required. Where any doubt exists about the need for any document to be available for a debate the Minister's Private Secretary should consult the Chief Whip's Private Secretary. Similar arrangements should be made with the Lord Privy Seal's office for debates in the House of Lords

Money Resolutions

30. All Money Resolutions are placed on the order paper in the name of the Financial Secretary, Treasury. But he or she is not responsible for seeing a Resolution through the House of Commons. It has always been the practice (as for Civil Estimates) that,

although Resolutions appear in the name of the Financial Secretary, the Minister having Departmental responsibility for the relevant Bill is also responsible for the Money Resolution in the House of Commons.

**Select Committee
Reports**

31. Any Minister or Parliamentary Private Secretary who receives a copy of a Select Committee Report in advance of publication [excluding copies sent to Departments at the Confidential Final Revise (CFR) stage] should make no use of them and should return them without delay to the Clerk of the Committee. Civil servants, including special advisers, are also covered by this ruling.

**Membership of
Select Committee/
All Party
Parliamentary
Groups**

32. In order to avoid any conflict of interest, Ministers on taking up office, should give up membership or chairmanship of a Select Committee or All Party Parliamentary Groups. This is to avoid any risk of criticism that a Minister is seeking to influence the Parliamentary process. Ministers must also avoid being drawn into a situation whereby their membership of a Committee could result in the belief that Ministerial support is being given to a particular policy or funding proposal.

**Changes in
Ministerial
responsibilities**

4. MINISTERS AND THEIR DEPARTMENTS

33. The Prime Minister is responsible for the overall organisation of the Executive and the allocation of functions between Ministers in charge of Departments. His approval should therefore be sought where changes are proposed that affect this allocation and the responsibilities for the discharge of Ministerial functions. This applies whether the functions in question are derived from statute or from the exercise of the Royal prerogative, or are general administrative responsibilities.

34. The Prime Minister's written approval should be sought where it is proposed to transfer functions:

- a. between Ministers in charge of Departments (unless the changes are de minimis, can be made administratively and do not justify public announcement – but see paragraph 39 below);
- b. within the field of responsibility of one Minister – where the change is likely to be politically sensitive or to raise wider issues of policy or organisation, for instance by "hiving off" the discharge of some functions to a Non-Departmental Public Body;
- c. between junior Ministers within a Department when a change in Ministerial titles is involved (see also paragraph 40 below).

35. In addition, the Prime Minister's written approval should be sought for proposals to allocate new functions to a particular Minister where the function does not fall wholly within the field of responsibilities of one Minister, or where there is disagreement about who should be responsible.

36. The Prime Minister will also determine questions where there is disagreement, for instance because one Minister has proposed a transfer of functions that is not accepted by the other(s) affected.

37. In giving approval or in determining disputed issues, the Prime Minister may want to take the advice of the Head of the Home Civil Service. The Minister responsible should therefore ensure that the Head of the Home Civil Service is consulted directly by the Permanent Secretary of the Department concerned, or that the officials in the Central Secretariat (Machinery of Government team) are approached so that they can bring the

proposals to his or her attention, before proposals for a transfer or allocation of functions are submitted to the Prime Minister. The submission to the Prime Minister should be copied to the Head of the Home Civil Service.

38. Responsibility for making a submission to the Prime Minister should normally lie with the ceding Minister in the case of transfers of existing functions, and the principal receiving Minister in the case of allocation of new functions.

39. Unresolved disputed issues concerning the allocation of functions should preferably be referred to the Head of the Home Civil Service before a submission is made to the Prime Minister; and it may be appropriate for him or her to make the submission on behalf of the Minister concerned. All proposals for a transfer of functions, including those not considered to require the Prime Minister's approval, should be notified to the Central Secretariat (Machinery of Government team) in the Cabinet Office before they are implemented.

Ministers outside the Cabinet

40. The Minister in charge of a Department is alone answerable to Parliament for the exercise of the powers on which the administration of that Department depends. The Minister's authority may, however, be delegated to a Minister of State, a Parliamentary Secretary or to an official; and it is desirable that Ministers should devolve to their junior Ministers responsibility for a defined range of Departmental work, particularly in connection with Parliament. A Minister's proposal for the assignment of duties to junior Ministers, together with any proposed "courtesy titles" descriptive of their duties should be agreed in writing with the Prime Minister, copied to the Secretary of the Cabinet.

41. Ministers of State and Parliamentary Secretaries will be authorised to supervise the day-to-day administration of a defined range of subjects. This arrangement does not relieve the Permanent Secretary of general responsibility for the organisation and discipline of the Department or of the duty to advise on matters of policy. The authority of Ministers outside the Cabinet is delegated from the Minister in charge of the Department; the Permanent Secretary is not subject to the directions of junior Ministers. Equally, junior Ministers are not subject to the directions of the Permanent Secretary. Any conflict of view between the two can be resolved only by reference to the Minister in charge of the Department or, if the latter is absent and a decision cannot be postponed, by reference to the Prime Minister or to a Minister whom he has nominated for the purpose.

**Arrangements
during absence
from London**

42. The Secretary of the Cabinet should be informed of Ministers' out-of-town engagements, and also of their weekend and holiday arrangements, so that, if a sudden emergency arises, he can inform the Prime Minister which Ministers are immediately available.

43. When a Minister in charge of a Department will be unable to be contacted for a considerable period because of absence or illness a Minister of State will normally take Ministerial charge of the Department. On some occasions, it may be desirable that arrangements should be made for another member of the Cabinet to be available to oversee the Department and to represent the Department's interests in discussions in Cabinet or Cabinet Committees. The Prime Minister's prior approval should be sought for the arrangements for superintending the work of a Department when the Minister in charge will be absent.

44. When one member of the Cabinet is acting in this way on behalf of another, special care must be taken over the exercise of statutory powers. Powers vested formally in "the Secretary of State", as distinct from a specific Secretary of State, can be exercised by any Secretary of State in the absence of another. Otherwise the statutory powers of one Minister cannot formally be exercised in the Minister's absence by a colleague in charge of another Department, and a Minister who is acting for an absent colleague should be careful to avoid appearing formally to exercise powers which are expressed by statute as exercisable by that colleague. The powers of a Board or Council may, however, be exercisable in the absence of its principal member. There may also be statutory authority for formal documents to be signed on behalf of an absent Minister by junior Ministers or officials. Ministers should seek legal advice in cases of doubt.

45. There is no similar difficulty about submissions to Her Majesty. Submissions made in the absence of a Minister can however be made only by a junior Minister who is a Privy Counsellor or by another member of the Cabinet. Submissions on behalf of an absent Secretary of State must be made by another Secretary of State.

**Parliamentary
Private Secretaries**

46. Parliamentary Private Secretaries are not members of the Government, and should be careful to avoid being spoken of as such. They are Private Members, and should therefore be afforded as great a liberty of action as possible; but their close and confidential association with Ministers imposes certain obligations on them. Official information given to them should generally be limited to what is necessary for the discharge of their Parliamentary and political duties. This need not preclude them

from being brought into Departmental discussions or conferences where appropriate, but they should not have access to secret establishments, or information graded secret or above, except on the personal authority of the Prime Minister. While, as Private Members, they need not adhere to the rules on private interests which apply to Ministers, they should, as a general rule, seek to avoid a real or perceived conflict of interest between their role as a Parliamentary Private Secretary and their private interests.

47. Ministers choose and appoint their own Parliamentary Private Secretaries with the written approval of the Prime Minister. The Chief Whip should, however, be consulted about the choice of a Parliamentary Private Secretary; and in view of the special position which Parliamentary Private Secretaries occupy in relation to the Government, the Prime Minister's approval must also be sought before any such appointment is offered and announced.

48. Ministers should ensure that their Parliamentary Private Secretaries are aware of certain principles which should govern the behaviour of Parliamentary Private Secretaries in the House of Commons. Like other Private Members, Parliamentary Private Secretaries are expected to support the Government in all important divisions. However, their special position in relation to the Government imposes an additional obligation which means that no Parliamentary Private Secretary who votes against the Government may retain his or her position. Parliamentary Private Secretaries should not make statements in the House or put Questions on matters affecting the Department with which they are connected. Parliamentary Private Secretaries are not precluded from serving on Select Committees but they should not do so in the case of inquiries into their own Minister's Departments and they should avoid associating themselves with recommendations critical of or embarrassing to the Government. They should also exercise discretion in any speeches or broadcasts which they may make outside the House, taking care not to make statements which appear to be made in an official or semi-official capacity, and bearing in mind at the same time that, however careful they may be to make it clear that they are speaking only as Private Members, they are nevertheless liable to be regarded as speaking with some of the authority which is attached to a member of the Government. Generally they must act with a sense of responsibility and with discretion; and they must not associate themselves with particular groups advocating special policies.

49. Parliamentary Private Secretaries making official visits in the United Kingdom may receive the normal Civil Service

travelling and subsistence allowances in respect of absences on official (or Departmental) business, as would other MPs undertaking work for Government Departments. It is for the Minister concerned to decide whether or not the Parliamentary Private Secretary, when accompanying the Minister, is engaged on Departmental business. It may occasionally be useful for a Parliamentary Private Secretary to accompany the Minister on an official visit abroad but no such arrangements should be made without the prior written approval of the Prime Minister. Where a Minister has to pull out of an event (UK or overseas) at the last minute and no other Minister is available to represent the Government, a Parliamentary Private Secretary may stand in for the Minister. However, such attendance should be exceptional and very much a last resort. It is for the Minister in charge of the relevant Department to justify the use of a Parliamentary Private Secretary in individual cases. The Prime Minister's approval will be required where this involves attendance at an overseas event.

Special Advisers

50. The employment of Special Advisers on the one hand adds a political dimension to the advice available to Ministers, and on the other provides Ministers with the direct advice of distinguished "experts" in their professional field, while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support. With the exception of the Prime Minister, Cabinet Ministers may each appoint up to two Special Advisers. The Prime Minister may also authorise the appointment of one or two Special Advisers by Ministers who regularly attend Cabinet. The Government expects the appointment of experts normally to be made to permanent or temporary Civil Service posts in accordance with the rules of the Civil Service Commissioners. Where, however, an individual has outstanding skills or experience of a non-political kind which a Minister wishes to have available while in a particular post, the Prime Minister may exceptionally permit their appointment as a special expert adviser above the usual limit of two advisers per Cabinet Minister. All appointments require the prior written approval of the Prime Minister, and no commitments to make such appointments should be entered into in the absence of such approval. Any departures from the rule of two Special Advisers per Cabinet Minister will need to be explained publicly. All such appointments should be made, and all Special Advisers should operate, in accordance with the terms and conditions of the Model Contract for Special Advisers and the Code of Conduct for Special Advisers.

Unpaid advisers

51. The appointment of an unpaid adviser is to provide advice to a Minister in their ministerial capacity. Such appointments are exceptional, and the prior written approval of the Prime Minister

should be sought for any such appointment before a commitment is entered into. These appointments carry no remuneration or reimbursement from public funds. The appointment of an unpaid adviser is a personal appointment by the Minister concerned and there is no contractual relationship between such an adviser and the Department. In making an appointment Ministers must ensure that there is no conflict of interest between the matters on which the unpaid adviser will be advising and their private concerns. A letter of appointment must be issued by the employing Minister making this clear. The letter should indicate the subjects with which an unpaid adviser may (or may not) deal and their access to papers. The normal rules of confidentiality also apply. Unpaid Advisers are subject to the Official Secrets Act and Business Appointment Rules. Aside from the provision of a furnished office, use of a telephone, and access to typing facilities, a personal computer and internal departmental messenger system, an unpaid adviser should constitute no cost to the public purse.

**Royal
Commissions,
Committees of
Inquiry**

52. The Prime Minister should be consulted in good time about any proposal to set up:

- a. Royal Commissions: these can only be set up with the sanction of the Cabinet and after The Queen's approval has been sought by the Prime Minister;
- b. independent Committees of Inquiry into any aspect of public policy.

Submissions proposing either of the above should contain details of the proposed size and structure of the body. This requirement is separate from the provisions concerning appointments set out in paragraph 53 below. The Lord Chancellor should also be consulted where there is a proposal to appoint a judge or legal officer (eg a Law Commissioner) to any of the above inquiries. Indeed it may be preferable for the individuals concerned to be approached by the Lord Chancellor, rather than the Department concerned.

**Appointments by
Ministers**

53. The Prime Minister should be consulted in good time about the appointment or re-appointment of:

- a. the Chair and other Members of Royal Commissions;
- b. the Chair of and, as required, the Members of
 - i. Public Corporations
 - ii. Nationalised Industry Boards

- iii. the most important Non-Departmental Public Bodies (both executive and advisory)
- iv. the more important Departmental committees, including those at 52b;
- c. Heads of Non-Ministerial Departments.
- d. Cases where the appointment is likely to have political significance. Ministers should take a wide view of what constitutes political significance. Even local or regional appointments may from time to time excite an unusual amount of public interest because of the circumstances surrounding the appointment or the background of the candidate. In all cases involving political considerations submissions to the Prime Minister by an appointing Minister should be copied to the Chief Whip. The Chief Whip should invariably be consulted before a Member of the House of Commons is approached about appointment to an office which would result in the vacation of a Parliamentary seat.

In all such cases the Prime Minister will need to be informed about the particular requirements of the post, the attributes essential for a candidate and the extent to which candidates meet such requirements. In addition, the Prime Minister should be informed of other factors bearing upon the appointment of particular candidates (eg conflicts of interest) and all other relevant information.

A current list of individual public appointments on which the Prime Minister would expect to be consulted is held by the Public Appointments Unit (PAU) in the Cabinet Office. This list has been agreed between Departments and No 10. Departments may also choose to consult the Prime Minister in other cases, depending on circumstances and bearing in mind sub-paragraph d above. In all cases, the submission should make clear why the Prime Minister is being consulted.

54. In all cases falling within paragraphs 52 and 53 the submission which is to be put to the Prime Minister should be cleared with the Head of the Home Civil Service in advance and should indicate that any salary proposals have been agreed with the Treasury if necessary. No commitment should be made to any individual before the Prime Minister has been consulted. In the case of Royal Commissions, the Private Secretary to the Prime Minister as well as the Lord Chancellor (see paragraph 52)

should be consulted before any informal soundings are undertaken. In other cases, any informal soundings should be made in such a way as to preserve freedom of action and avoid any appearance of commitment.

55. Where there is doubt about the need for consultation with the Prime Minister, the PAU should be consulted.

56. Subject to the above paragraphs and to the constitution of the body to which the appointment is made, public (non-Civil Service) appointments are the responsibility of the Minister concerned, who should appoint the person(s) he or she considers to be best qualified for the position. In doing so, the Minister should have regard to public accountability, the requirements of the law and to *The Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies*. The process by which such appointments are made should conform to the principles in the Code - Ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality - and to the procedures set out in detail in the Code.

57. In considering candidates for public appointments, Ministers should pay particular attention to securing, on merit, proper representation of women, members of ethnic minorities and disabled people on public bodies.

5. MINISTERS AND CIVIL SERVANTS

58. Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; a duty to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code; a duty to ensure that influence over appointments is not abused for partisan purposes; and a duty to observe the obligations of a good employer with regard to terms and conditions of those who serve them. Civil servants should not be asked to engage in activities likely to call in question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for Party political purposes.

The role of the Accounting Officer

59. Heads of Departments and the chief executives of executive agencies are appointed as Accounting Officers. The essence of the role is a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Committee of Public Accounts on these matters, within the framework of Ministerial accountability to Parliament for the policies, actions and conduct of their Departments.

60. Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. If a Minister in charge of a Department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objection to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled. If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question and send the relevant papers to the Comptroller and Auditor General. A similar procedure applies where the Accounting Officer has concerns as regards the value for money of a proposed course of action. The procedure enables the Committee of Public Accounts to see that the Accounting Officer does not bear personal responsibility for the actions concerned.

61. The role of Accounting Officers is described in detail in the

Treasury memorandum, *The Responsibilities of an Accounting Officer*. There is also a Treasury handbook, *Regularity and Propriety*.

Civil servants and Party Conferences

62. Ministers should not ask civil servants to attend, still less take part in, Party Conferences or meetings of policy or subject groups of any of the Parliamentary parties. Nor should civil servants in their official capacity accept invitations to conferences convened by, or under the aegis of, party political organisations except when their presence is required for carrying through essential Departmental business unconnected with the conference. An exception to this rule is made for Special Advisers who, under the terms of their contracts, may attend Party functions, including the annual Party conference (but they may not speak publicly at the conference) and maintain contact with Party members. Further guidance is available in the *Directory of Civil Service Guidance, Volume 2* (www.cabinet-office.gov.uk/guidance). If a Minister wishes to have a factual brief for a party political occasion to explain Departmental policies or actions, there is no reason why this should not be provided.

Contacts with outside interest groups, including Lobbyists

63. Ministers receive deputations from many outside interest groups which Ministers will wish to consider as part of the formulation of Government policy. The basic facts of formal meetings between Ministers and outside interest groups should be recorded, setting out the reasons for the meeting, and the names of those attending and the interests represented.

6. MINISTERS' CONSTITUENCY AND PARTY INTERESTS

64. It is wrong in principle for Ministers to use for Party or constituency work facilities provided at Government expense to enable them to carry out their official duties. This point of principle is reflected in the entitlement of Ministers to a Parliamentary salary in recognition of the time spent in attending to the interests of their constituents, and to the reimbursement of their secretarial expenses and the expenses of living away from home when attending to constituency business, within the limits prescribed by the relevant Resolutions of the House of Commons. Ministers should thus have their constituency work done at their own expense, as they would if they were private Members of Parliament.

65. Government property should not generally be used for constituency work or party activities. A particular exception is recognised in the case of Nos. 10 and 11 Downing Street, Carlton House Terrace and other official residences where senior Ministers are required to live for the purposes of the job. Where Ministers host Party events in these residences or other Government property, it should be at their own or Party expense with no cost falling to the public purse.

66. Where Ministers have to take decisions within their Departments which might have an impact on their own constituencies, they should, of course, take particular care to avoid any possible conflict of interest.

Parliamentary Commissioner for Administration cases

67. Ministers in the Commons who are asked by members of the public to submit cases to the Parliamentary Commissioner for Administration (PCA) should, where possible, act no differently from other MPs. Ministers should accordingly consider requests on their merits in deciding whether to refer complaints to the PCA, to take them up with the Minister of the Department concerned, to refer the case to another MP (where the complaint is not from a constituent of the Minister) or to decline to take action. Any Minister who has in mind the reference of a case to the PCA would naturally wish to inform in advance the Minister of the Department concerned.

68. Where a complaint from a constituent is against the Minister's own Department the Minister will generally wish to investigate it personally unless he or she, or one of the other Ministers in the Department, has already been directly involved in the case. Where a Minister has been so involved, the PCA should be asked to investigate if the case is within his

jurisdiction; and there may be other circumstances in which a Minister will prefer to refer a case to the PCA straight away.

Deputations

69. Ministers are free to make their views about constituency matters known to the responsible Minister by correspondence, leading deputations or by personal interview provided they make clear that they are acting as their constituents' representative and not as a Minister. Particular problems arise over views expressed on planning applications and certain other cases involving exercise of discretion by Ministers (eg on school or hospital closures, highway or power station inquiries) in which representations intended to be taken into account in reaching a decision may have to be made available to other parties and thus may well receive publicity. Ministers are advised to take particular care in such cases to represent the views of their constituents rather than express a view themselves; but when they find it unavoidable to express a view they should ensure that their comments are made available to the other parties, avoid criticism of Government policies, confine themselves to comments which could reasonably be made by those who are not Ministers, and make clear that the views they are putting forward are ones expressed in their capacity as constituency MPs. Once a decision has been announced, it should be accepted without question or criticism. It is important, in expressing such views, that Ministers do so in a way that does not create difficulty for Ministers who have to take the decision and that they bear in mind the Government's collective responsibility for the outcome. Ministers should also take account of any potential implications which their comments could have on their own Departmental responsibilities.

70. Parliamentary Private Secretaries, particularly those in Departments with planning responsibilities should take special care when making representations to Ministers about planning issues. In particular, they should not discuss planning cases with interested parties or imply that they have any influence over planning decisions. In representing their constituency interests they should abide by the guidance in paragraph 69.

Lottery Bids

71. In order to avoid the impression that Ministers are seeking to influence decisions on awards of Lottery money, Ministers should not normally give specific public support for individual applications for Lottery funding. Where a Minister is the constituency MP for a potential Lottery application he or she should be guided by the principles set out in paragraph 69. Ministers lending support to a specific project should do so on the very clear understanding that it is in a constituency capacity.

7. MINISTERS' VISITS

Ministers' visits overseas

72. Overseas visits should not normally be made while Parliament is in session. Ministers should arrange such visits only in the Recess or, where appropriate, at weekends, except where the visit is in connection with the business of the European Union or there are other compelling reasons of Government business. In particular, overseas visits which are largely of a fact-finding kind should be reserved for the Parliamentary Recess. Moreover, in planning overseas visits Ministers should take account of paragraph 6 above, ie that Cabinet meetings take precedence over all other business (other than meetings of the Privy Council). Sufficient Ministers must also be available during Recesses to ensure effective conduct of Government business, and it may be necessary for this reason to restrict or reconsider absences abroad.

73. Any member of the Cabinet who wishes to be absent from the United Kingdom for any reason, except for visits to European Union countries on official business, or visits to member countries for NATO business should:

- a. seek the Prime Minister's written approval. This must be done before any commitment, even of an informal nature, is made. The reasons for the visit and a list of the countries to be visited should be given; where it is considered to be clearly in the public interest that a Minister be accompanied by his or her spouse/partner at public expense the Prime Minister's permission should be sought. Copies of the letter should be sent to the Foreign and Commonwealth Secretary and to the Chief Whip: their views will be taken into account by the Prime Minister before reaching a decision. A copy should also be sent to the Secretary of the Cabinet;
- b. after the Prime Minister's approval has been obtained the Minister should, for all visits abroad other than visits to European Union or NATO or WEU countries on official business, seek The Queen's permission to leave the country. At the same time Her Majesty should be informed of the arrangements made for the administration of the Minister's Department during his or her absence.

74. Other Ministers who propose to leave the United

Kingdom whether on duty or on holiday must seek the approval of the Ministerial head of the Department concerned, the Foreign and Commonwealth Secretary and the Chief Whip. They need not obtain the Prime Minister's or The Queen's permission but the Prime Minister's written approval must be sought for official visits overseas by Ministers' spouses/partners, special advisers, unpaid advisers and Parliamentary Private Secretaries (paragraphs 49, 51, 87 and 88).

75. Ministers' Private Secretaries should not themselves approach diplomatic posts direct nor should they make tentative preparations for overseas visits (other than those to EU countries on official business) before telling the Foreign and Commonwealth Office: arrangements for official Ministerial visits should invariably be put in the hands of the diplomatic post concerned.

76. Ministers should make it their personal responsibility to approve the size and composition of any Ministerial delegation for which their Department is responsible. (Where a delegation includes a Foreign and Commonwealth Office Minister the agreement of the Foreign and Commonwealth Secretary in the size and composition of the delegation should also be obtained.) Each Minister in charge of a Department should ensure that the Department draws up and maintains a comprehensive and central record of travel by Ministers in the Department. This record should contain details of the numbers and costs of all Ministerial delegations whose travel has been at public expense, including visits to EU countries for the purpose of attending meetings of EU Councils. The record should be maintained in such a way that an up-to-date list of visits and costs of such visits can be made available by Departments at short notice in the event of Departmental Ministers being asked to account for travel overseas. Ministers should give a lead in keeping down the size of parties of visitors, by keeping their own parties as small as possible.

Relations with other governments

77. Ministers should remember the importance of sending to the Foreign and Commonwealth Secretary a note of the salient points of any discussions which they may have with representatives of foreign or Commonwealth countries. This applies to informal discussions as well as those held in the course of official business.

Visits by Commonwealth or foreign Ministers

78. Ministers should inform the Foreign and Commonwealth Secretary before extending invitations to Ministers in other governments to pay official visits to this country; and in any case of doubt or difficulty, they should consult him. Departments

should also inform the Foreign and Commonwealth Office about all visits which become known to them, whether private or official, by Ministers in other governments or by any other person of equivalent status potentially at risk, so that the security implications can be considered at the earliest possible stage.

**Entertainment
overseas**

79. Ministers should not overlook the possible foreign policy implications of such day-to-day matters as offering hospitality to prominent political figures visiting this country, accepting social commitments of a similar kind, giving public support for petitions, open letters, etc. Such actions may be construed as significant by foreign observers of the United Kingdom. In any case of doubt Ministers should consult the Foreign and Commonwealth Secretary before making commitments. In addition the Foreign and Commonwealth Secretary should be consulted whenever a Minister intends to make a speech touching on matters affecting foreign and Commonwealth affairs.

80. If it is thought that a Minister may need to provide entertainment while overseas, the advice of the Foreign and Commonwealth Office should be sought both on the desirability and on the form of such entertainment.

**Ministers recalled
from abroad**

81. If a Minister is abroad with permission and is called home for Ministerial or Parliamentary reasons - including to vote - the cost of the extra journey back and forth may be met by public funds.

**Ministers' visits in
the United Kingdom**

82. Ministers who are planning official visits to Scotland, Wales and Northern Ireland should inform the Secretary of State concerned and the Chief Whip. It is also customary to inform the Lord Chancellor of prospective visits to the Channel Islands and the Isle of Man. In addition Ministers wishing to visit a Government establishment not sponsored by the Department in which they are a Minister (eg the barracks of a unit of the Armed Forces) should advise the sponsor Department in advance.

83. It is the custom for a Minister when preparing to make a visit within the United Kingdom to inform the Members for the constituencies to be included within his itinerary. Special care should be taken not to overlook this courtesy. Ministers cannot, of course, invite Members to accompany them to functions organised by a third party, but adequate notice to the relevant constituency MP will enable them to ensure that they have an opportunity to request invitations from local organisers to functions of an official nature, should they wish to attend. It will also enable them to make suggestions to the Minister about the inclusion in the itinerary of places which it would be helpful to

visit. Similar information should be provided when UK Ministers are visiting the constituency of Members of the Scottish Parliament and The National Assembly for Wales.

**Expenses on travel
and hospitality**

84. In using official cars and travelling by rail or air, Ministers must always make efficient and cost-effective travel arrangements. Detailed guidance is set out in *Travel by Ministers*. When Ministers travel on official business, their travel expenses should normally be borne by the Departmental Vote. When any expenses are not met in this way, Ministers will wish to ensure that no undue obligation is involved.

85. Accepting offers of free travel can be misinterpreted. However, an offer to a Minister on official business to accompany a representative of a host foreign government may be acceptable, provided it creates no undue obligation, and if it offers a saving of official time or provides an opportunity to conduct official business. Offers of transport from other organisations should not normally be accepted, except where provided as an integral part of a tour of inspection. In exceptional cases such an offer may be accepted if this would represent a saving of official time and there is no risk of an undue obligation being created. In these cases, if the journey is of any significant distance, the organisation concerned should be reimbursed from the public purse to the value of a scheduled business class ticket. In any cases of doubt, the Prime Minister should be consulted.

Air Miles

86. Air Miles and other benefits earned through travel paid for from public funds, other than where they are de minimis (for example, access to special departure lounges or booking arrangements which go with membership of regular flier clubs), should be used only for official purposes or else foregone. However, if it is impracticable to use the benefits for Government travel, there is no objection to Ministers donating them to charity if this is permissible under the terms of the airline's scheme and the charity is one chosen by the airline.

**Travelling expenses
of spouses/ partners**

87. The expense of a Minister's spouse/partner when accompanying the Minister on the latter's official duties may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. In the case of official visits overseas, the Prime Minister's prior assent should be obtained on each occasion (see paragraph 74). For official visits within the United Kingdom, this is at the discretion of the Minister in charge of the Department concerned who should consult the Permanent Secretary. The Prime Minister's prior written approval is

however required for any arrangement whereby a Minister's spouse/partner may regularly travel at public expense within the United Kingdom.

**Travelling expenses
of Special Advisers**

88. If necessary, a Minister may take a Special Adviser on an overseas visit at the public expense, but when an unpaid adviser whose salary is not met from public funds accompanies a Minister on Government business, any additional expenditure which may be incurred should not normally fall on public funds. The written approval of the Prime Minister should be obtained before a Special Adviser or an unpaid adviser accompanies a Minister overseas.

**Offers of hospitality,
gifts, etc.**

89. Detailed rules on the acceptance of gifts, services and hospitality can be found at paragraphs 136-139. While these paragraphs make clear that no Minister or member of their family should accept a gift from anyone which would, or might appear to, place him or her under an obligation (see paragraph 136), there may be difficulty in refusing a gift from another government (or governmental organisation) without the risk of apparent discourtesy. On the other hand the acceptance of a gift or the knowledge that one will be offered may in some countries and in some circumstances entail the offer of a gift in exchange. As a general rule Ministers should not offer gifts or initiate an exchange. In deciding whether to accept gifts from or offer gifts to members of other governments (or governmental organisations) Ministers should wherever possible consult their Permanent Secretaries who will be able to advise them of the rules applicable in such circumstances.

Foreign decorations

90. It is a well-established convention that Ministers should not, while holding office, accept decorations from foreign countries.

8. MINISTERS AND THE PRESENTATION OF POLICY

Co-ordination of Government Policy

91. Official facilities financed out of public funds can be used for Government publicity and advertising, but may not be used for the dissemination of material which is essentially party political. The conventions governing the work of the Government Information Service are set out in *Guidance on the Work of the Government Information and Communication Service*.

92. In order to ensure the effective presentation of government policy, all major interviews and media appearances, both print and broadcast, should be agreed with the No 10 Press Office before any commitments are entered into. The policy content of all major speeches, press releases and new policy initiatives should be cleared in good time with the No 10 Private Office. The timing and form of announcements should be cleared with the No 10 Strategic Communications Unit. Each Department should keep a record of media contacts by both Ministers and officials.

Press conferences

93. In order to explain policies or to announce new policies a Minister may decide to hold a press conference. This will be convened by the Chief Information Officer of the Department. All press conferences are on the record and open to any representative of the home and overseas media. It is often the practice of Ministers to give separate radio and TV interviews afterwards in order to secure the most effective presentation of their views or announcement. Where a Minister wishes to address the Lobby the No 10 Press Office should be consulted both about the desirability of such a briefing and the method of organising it. This paragraph applies to overseas as well as to the home media.

Publication of White and Green Papers

94. Before publishing a White or Green Paper, Departments should consider whether it raises issues which require full collective Ministerial consideration, and, after consulting the Cabinet Office as necessary, seek clearance through the appropriate Cabinet Committee. Any Command Paper containing a major statement of Government policy should be circulated to the Cabinet before publication. This is usually done at the Confidential Final Revise (CFR) stage and should be done under cover of a letter from the Minister's Private Secretary. This rule applies to Papers containing major statements even when no issue requiring collective consideration is required.

95. Except where such Papers are of a routine character or of

minor importance, the timing of their publication is governed by similar considerations to those applying to announcements made in Parliament. Ministers are therefore asked to apply to White Papers the procedure laid down in paragraph 28(a) above. From time to time, White Papers are laid before Parliament in the name of the Prime Minister. In all such cases, the lead Department on the policy issues concerned takes responsibility for the processing and distribution of the White Paper. This should be handled in close consultation with the Parliamentary Clerk at No 10.

96. Care should be taken to avoid infringing Parliamentary privilege when publicity is being arranged for White Papers and similar documents. A procedure is available whereby Confidential Final Revise proof copies (CFRs) of White Papers can be made available under embargo to the Lobby and Upper Gallery, and with discretion to members of other organised groups of correspondents, a short time before copies are laid in the Vote Office (ie before publication). In some cases (for instance, where commercially sensitive information is involved, or where the disadvantages of any breach of an embargo are thought to outweigh the benefits of making advance copies available to the media) no copies should be made available to the media before publication. Where it is considered that the balance of advantage favours the issue of advance copies to the media under embargo, so as to enable their representatives to digest the contents of a White Paper before general publication, the interval between issue of CFRs under embargo and publication should not normally exceed a few hours: for instance, where a White Paper is to be published in the afternoon, CFRs should be issued under embargo during the morning of the same day. Only in special circumstances - for instance, if a White Paper is particularly long or technical - should CFRs be issued under embargo overnight. Any proposal to issue CFRs under an embargo of longer than 24 hours must be cleared with the Chief Press Secretary at No 10. CFRs may be given only to representatives of the media and then only under strict embargo. Any breach of an embargo is a serious matter and should be reported immediately by the Chief Information Officer of the Department to the Minister in charge of the Department and to No 10.

Speeches

97. Ministers cannot speak on public affairs for themselves alone. In all cases other than those described in paragraph 69 they speak as Ministers; and the principle of collective responsibility applies. They should ensure that their statements are consistent with collective Government policy and should not anticipate decisions not yet made public. Ministers should exercise special care in referring to subjects which are the

responsibility of other Ministers. Any Minister who intends to make a speech which deals with, or makes observations which bear upon, matters which fall within another Minister's responsibilities should consult that Minister.

98. The Prime Minister should always be consulted before any mention is made of matters which either affect the conduct of the Government as a whole or are of a constitutional character. The Foreign and Commonwealth Secretary should always be consulted before any mention is made of matters affecting foreign and Commonwealth affairs, relations with foreign and Commonwealth countries and the political aspects of the affairs of dependent territories. Ministers wishing to refer in a speech or any other public statement to economic policy or to proposals involving additional public expenditure or revenue costs should in all cases consult the Chancellor of the Exchequer or the Chief Secretary. Ministers wishing to refer to defence policy should in all cases first consult the Secretary of State for Defence. Ministers wishing to discuss or refer to Northern Ireland should in all cases first consult the Secretary of State for Northern Ireland.

99. Ministers should use official machinery for distributing texts of Ministerial speeches only when such speeches are made on official occasions and deal with Government as distinct from Party policy. Speeches made in a party political context should be distributed through the Party machinery.

100. Ministers should not accept payment for speeches of an official nature or which directly draw on their responsibilities or experience as Ministers, either on their own or their Department's account, or with a view to donating the fee to charity. If the organisation receiving the Minister insists on making a donation to a charity then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.

Broadcasts

101. The provisions of paragraphs 91-93 apply to Ministerial broadcasts as well.

102. Radio and television broadcasts by ministers are of four types: party political; Budget; special broadcasts by Ministers; and interviews with Ministers for news and feature programmes:

- a. Party political broadcasts on radio and television within the Government's quota are arranged through the Chief Whip acting on behalf of the

Prime Minister;

- b. Budget broadcasts (by the Chancellor of the Exchequer and a member of the main Opposition Parties in reply) constitute a special series of party political broadcasts. These are arranged through Parliamentary channels and agreed by the Chancellor of the Exchequer;
- c. the broadcasting authorities may provide opportunities within the regular framework of their programmes for Ministers to give factual explanations of legislation or policies approved by Parliament, or to seek the co-operation of the public on matters where there is a general consensus of opinion. The Opposition have no automatic right of reply. The British Broadcasting Corporation (BBC) may also provide the Prime Minister or a senior Cabinet Minister designated by him with an opportunity to broadcast to the nation to explain events of prime national or international importance or to seek public co-operation over such events. These are traditionally known as "Ministerial" broadcasts. The Opposition have the right to make an equivalent broadcast in reply. In this event the BBC will arrange as soon as possible for a broadcast discussion of the issues involved. A member of the Cabinet, a senior member of the opposition, and, if they so desire, representatives of third parties with appreciable electoral support would be invited to participate. The Independent Television Commission (ITC) is not obliged to relay either type of special broadcast, but if they transmit a "Ministerial" broadcast they must also take any Opposition reply and arrange a third stage, the discussion programme. Proposals for a special broadcast of either type should be referred as soon as possible to the Chief Press Secretary at No 10. The Leader of the House of Commons and the Chief Whip should also be consulted. No approach should be made to the BBC or to the ITC for a broadcast of either type without the approval of the Prime Minister.

103. Ministers invited to broadcast on radio and television in a private and not a Ministerial capacity will wish to consider if such a broadcast would have a bearing on another Department's

responsibility in which case they should clear the matter with the colleague concerned before agreeing to the invitation. Ministers invited to take part in programmes to be broadcast outside the United Kingdom should consult the Foreign and Commonwealth Secretary and any other Minister who may be concerned with the subject of the broadcast. Ministers invited to broadcast while on a visit to another country should seek the advice of Her Majesty's Representative in that country. Ministers will wish to use their discretion as to whether the nature of any such invitation at home or abroad is such that they should consult the Prime Minister before agreeing to broadcast.

104. Ministers should not accept payment for official broadcasts on radio or television, either on their own or on their Department's account or with a view to donating the fee to charity. If the organisation receiving the Minister insists on making a donation to a charity then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.

Press articles

105. Ministers may contribute occasionally to a book, journal or newspaper (including a local newspaper in their constituency) for the purpose of supplementing other means of informing the public about the work of their Department provided that publication will not be at variance with their obligations to Parliament and their duty to observe the principle of collective Ministerial responsibility. Any Minister wishing to practice regular journalism, including the contribution of weekly or fortnightly articles to local newspapers in their constituencies, must have the prior approval of the Prime Minister. In cases of doubt, and in all cases where a Minister is contemplating the contribution of an article going beyond the strict confines of his or her Departmental responsibility, the Prime Minister should be consulted, before work has begun and in any case before any commitment to publish is entered into. In all cases where an article contains material which falls within the Departmental responsibility of another Minister, that Minister must be consulted. Ministers should not accept payment for writings, either on their own or on their Department's account, or with a view to donating the fee to charity. If the organisation receiving the Minister's written contribution insists on making a donation to a charity then it should be a charity of the organisation's choice. This is to avoid any criticism that a Minister is using his or her official position to influence or take the credit for donations to charity.

106. Ministers are advised not to engage in controversy in the

correspondence columns of either the home or the overseas press. Ministers may however see advantage in correcting serious errors or misstatements of fact which lead to false conclusions. Such letters should be brief and confined to the exposition of facts.

Books

107. Ministers may not, while in office, write and publish a book on their Ministerial experience. Nor, while serving as a Minister, may they enter into any agreement to publish their memoirs on leaving their Ministerial position, without the agreement of the Prime Minister. Former Ministers are required to submit their manuscript to the Secretary of the Cabinet and to conform to the principles set out in the Radcliffe Report of 1976 (Cmnd 6386) (see paragraphs 18 and 19 above). Ministers may not receive payment for a book written before becoming a Minister if the decision to publish was taken afterwards.

Party and other publications

108. The rule in paragraph 105 does not debar Ministers from contributing to the publications of the political organisations with which they are associated. However, in all cases where an article contains material which falls within the Departmental responsibility of another Minister, that Minister must be consulted. Payment should not be accepted for articles which draw on Ministerial experience or which have been prepared with any assistance from public resources.

109. The prohibition of the practice of journalism by Ministers above, does not extend to writings of a literary, sporting, artistic, musical, historical, scientific, philosophical or fictional character which do not draw on their Ministerial experience. While payment for the occasional piece is acceptable, regular payments are not.

110. Ministers are sometimes asked to give interviews to historians or to other persons engaged in academic research or in market opinion surveys, or to fill in questionnaires at the request of such people or organisations. Ministers should bear in mind the possibility that their views may be reported in a manner incompatible with their responsibilities and duties as members of the Government. Careful consideration should therefore be given to such invitations before they are accepted; in cases of doubt, the Prime Minister should be consulted.

Complaints

111. Ministers who wish to make a complaint against a journalist or a particular section of the media either to the Press Complaints Commission or to the Broadcasting Complaints Commission must have the authority of the Prime Minister. The nature of the complaint and the case for referring it to the

appropriate body should be set out in a letter to the Chief Press Secretary at No 10, copied to the Secretary of the Cabinet. Paragraph 25 of the Ministerial Code is also relevant in relation to defamation proceedings.

Royal Commissions

112. The Prime Minister should be consulted if any Minister is invited to address a Royal Commission or Committee of Inquiry.

9. MINISTERS' PRIVATE INTERESTS

General principle

113. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests, financial or otherwise.

Responsibility for avoiding a conflict

114. It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, and to defend that decision, if necessary by accounting for it in Parliament. The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally, drawing on precedent and if need be other parts of government including the Secretary of the Cabinet, or by securing the services of a professional adviser (which should be arranged through the Central Secretariat of the Cabinet Office). In cases of serious difficulty or doubt the matter may be referred to the Prime Minister for a view. But ultimately it is the responsibility of Ministers individually to order their own private lives in such a way as to avoid criticism, and the final decision about what action to take to achieve that is theirs.

Procedure

115. On appointment to each new office Ministers are advised to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should cover not only the Minister's personal interests but those of a spouse or partner, of children who are minors, of trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. The list should cover all kinds of interest including financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, as well as relevant non-financial private interests such as links with outside organisations, and previous relevant employment.

116. On receipt of the written list the Permanent Secretary will arrange a meeting with the Minister to discuss it and to consider what advice is necessary and from what source, and what further written information is needed. The Permanent Secretary will stand ready either to give a considered view on the issues which the Minister raises, drawing on precedent and the help of the Cabinet Office as necessary, or to arrange for expert or professional advice also to be made available to the Minister from inside or outside government. At the end of the exercise Ministers are advised to record in writing what action has been considered and taken, and to provide the Permanent Secretary with a copy of that record.

117. Where it is proper for a Minister to retain a private interest it is the rule that he or she should declare that interest to Ministerial colleagues if they have to discuss public business which in any way affects it and that the Minister should remain entirely detached from the consideration of that business. Similar steps may be necessary if a matter under consideration in the Department relates in some way to a Minister's previous or existing private interests such that there is or may be thought to be a conflict of interest. Particular care needs to be taken where financial interests are involved: see paragraphs 123 to 130 below.

118. The personal information which Ministers disclose to those who advise them is treated in complete confidence and may not be disclosed without their permission. If an allegation is made that a particular Minister has a conflict of interest it must be for that Minister to explain their position and justify what has been done. In doing so, they may wish to make public the list of their private interests (required under paragraph 115) and the steps taken to avoid an actual or perceived conflict. It is open to them if they wish to confirm (if it is the case) that they have consulted their permanent secretary in accordance with the Code. The Minister should however consult the permanent secretary about the content of any such statement before making it to ensure that there is agreement about the content, and any disagreement should be referred to the Prime Minister.

119. The intention of these procedures is not to inhibit the holding of Ministerial office by individuals with wide experience, whether of industry, a profession or some other walk of life, but to ensure that systemic steps are taken to avoid the danger of an actual or perceived conflict of interest. The following paragraphs set out in more detail particular measures which should be taken based on experience over successive governments.

Public appointments

120. When they take up office Ministers should give up any other public appointment they may hold. Where it is proposed that such an appointment should be retained, the Prime Minister must be consulted.

Non-public bodies

121. Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy and thus give rise to a conflict of interest. Hence Ministers should not normally accept invitations to act as patrons of or otherwise offer support to pressure groups, or organisations dependent in whole or in part on Government funding. There is normally no objection to a Minister associating him or herself with a charity (subject to the points above) but Ministers should take care to ensure that in

participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed (and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the Prime Minister should be consulted before a Minister accepts an association with such bodies. Ministers should also exercise care in giving public support for petitions, open letters etc.

Trade unions

122. There is, of course, no objection to a Minister holding trade union membership but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange their affairs so as to avoid any suggestion that a union of which they are a member has any undue influence; they should take no active part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union (a nominal payment purely for the purpose of protecting a Minister's future pension rights is acceptable).

Financial interests

123. Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. In order to avoid such a danger, they should be guided by the general principle that they should either dispose of any financial interest giving rise to the actual or apparent conflict or take alternative steps to prevent it. It is particularly important that the procedure described in paragraphs 115 and 116 is followed in the case of financial interests. The Permanent Secretary as Accounting Officer has a personal responsibility for financial propriety and regularity across the Department's business, and his or her advice must be given particular weight where such issues arise.

124. Two particular ways in which a conflict of financial interest, or the perception of it, can arise are as follows:

- a. from the exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or
- b. from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.

125. Apart from the risk to the Minister's reputation, two legal obligations must be born in mind:

- a. any exercise or non-exercise by a Minister (including a Law Officer) of a legal power or discretion or other influence on a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid. The courts interpret conflict of interest increasingly tightly;
- b. Ministers are bound by the provisions of Part V of the Criminal Justice Act 1993 in relation to the use or transmission of unpublished price-sensitive information obtained by virtue of their Ministerial office.

**Financial interests:
alternatives to disposal**

126. If for any reason the Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Permanent Secretary of the Department and, where necessary, of external advisers, (which should be raised through the Central Secretariat of the Cabinet Office) what alternative measures would sufficiently remove the risk of conflict. These fall into two types: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.

**Steps to be taken
where financial
interests are retained**

127. As regards steps other than disposal which might be taken in relation to interests, the Minister might consider placing all investments (including derivatives) into a 'blind' trust, ie one in which the Minister is not informed of changes in investments or of the state of the portfolio, but is still fully entitled to both the capital and income generated. A blind trust is only blind in the case of a widely-spread portfolio of interests, managed by external advisers. Once a blind trust has been established the Minister should not be involved or advised of decisions on acquisition or disposal relating to the portfolio. Ministers should remember that Part VI of the Companies Act 1985 allows companies to require information as to the true owners of its shares, which could result in the fact of a Minister's interest becoming public knowledge despite the existence of a trust. It should also be remembered that even with a trust the Minister could be assumed to know the contents of the portfolio for at least a period after its creation, so the protection a trust offers against conflict of interest is not complete. Alternatively a power of attorney may be suitable. However, this is a complex area and the Minister should seek professional advice because, among other things there may be tax consequences in establishing this kind of arrangement.

128. Another step which (perhaps in conjunction with other

steps) might provide a degree of protection would be for the Minister to accept an obligation to refrain from dealing in the relevant shareholdings etc for a period.

129. Unless adequate steps can be taken in relation to the financial interests themselves, the Minister and the employing Department must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions. The extent to which this can be done depends on the specific powers under which the Minister would be required to take decisions. For example:

- a. in the case of a junior Minister, it should be possible for the Ministerial head of the Department to take the decision or for the case to be handled by another junior Minister in the Department;
- b. in the case of the Ministerial head of Department or the holder of a specific office in whom powers are vested, it will normally be possible without risk of legal challenge to pass the handling of the matter to a junior Minister or appropriate official in the Department, or, exceptionally, to another Secretary of State. In such cases, legal advice should always be sought to ensure that the relevant powers can be exercised in this way.

130. In some cases, it may not be possible to devise such a mechanism to avoid actual or perceived conflict of interest, for example because of the nature or size of the investment or the nature of the Department's work. In such a case, or in any case where, after taking legal advice and the advice of the Permanent Secretary, the Minister is in doubt whether adequate steps have been or can be taken, he or she should consult the Prime Minister. In such a case it may be necessary for the Minister to cease to hold the office in question.

Partnerships

131. Ministers who are partners, whether in professional firms, for example solicitors, accountants etc, or in other businesses, should, on taking up office, cease to practise or to play any part in the day-to-day management of the firm's affairs. They are not necessarily required, however, to dissolve their partnership or to allow, for example, their annual practising certificate to lapse. Beyond this it is not possible to lay down precise rules applicable to every case; but any continuing financial interest in the firm would make it necessary for the Minister to take steps to avoid involvement in relevant decisions, as described in paragraph 129 above. Ministers in doubt about their personal position should

consult the Prime Minister.

Directorships

132. Ministers must resign any directorships they hold when they take up office. This applies whether the directorship is in a public or private company and whether it carries remuneration or is honorary. The only exception to this rule is that directorships in private companies established in connection with private family estates or in a company formed for the management of flats of which the Minister is a tenant may be retained subject to the condition that if at any time the Minister feels that conflict is likely to arise between this private interest and public duty, the Minister should even in those cases resign the directorship. Directorships or offices held in connection with charitable undertakings should also be resigned if there is any risk of conflict arising between the interests of the undertakings and the Government.

Membership of Lloyd's

133. A Minister holding office as Prime Minister, Chancellor of the Exchequer or Secretary of State for Trade and Industry, or a Minister holding office as a Minister in the Treasury who is responsible under the Chancellor of the Exchequer for taxation matters relating specifically to Lloyd's, or as a Minister in the Department of Trade and Industry responsible under the Secretary of State for Trade and Industry for insurance matters relating specifically to Lloyd's, should not become an underwriting member of Lloyd's. Such a Minister, if already a member of Lloyd's on appointment, should cease underwriting during tenure of office.

134. Other Ministers who are underwriting members of Lloyd's should not take an active part in the management of the affairs of syndicates of which he/she is a member, and should on appointment as a Minister withdraw from any such active participation in its management. Ministers with underwriting connections to Lloyd's (whether past or present) should seek the advice of their Permanent Secretary as there can be implications for handling Departmental or collective discussions or decisions which are not always obvious.

Nomination for prizes and awards

135. From time to time, the personal support of Ministers is requested for nominations being made for international prizes and awards, eg, the annual Nobel prizes. Ministers should not sponsor individual nominations for any awards, since it would be inevitable that some people would assume that the Government was itself thereby giving its sponsorship.

Acceptance of gifts and hospitality

136. It is a well established and recognised rule that no Minister or public servant should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under

an obligation. The same principle applies if gifts etc are offered to a member of their family.

137. This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the Prime Minister's guidance. The same rules apply to the acceptance of gifts from donors with whom a Minister has official dealings in this country as to those from overseas (paragraph 89 above), that is:

- a. Receipt of gifts should, in all cases, be reported to the Permanent Secretary;
- b. Gifts of small value (currently this should be put at up to £140) may be retained by the recipient;
- c. Gifts of a higher value should be handed over to the Department for disposal, except that
 - (i) The recipient may purchase the gift at its cash value (abated by £140). If the gift is worth more than £125¹ it should be declared in the Register of Members' Interests
 - (ii) If the recipient wishes to reciprocate with, and pay for, a gift of equivalent value, the gift received may be retained
 - (iii) If the Department judges that it would be of interest, the gift may be displayed or used in the Department
 - (iv) If the disposal of the gift would cause offence or if it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the Department for this purpose for a period of up to five years;
- d. Gifts received overseas worth more than the normal travellers' allowances should be declared at importation to Customs and Excise who will advise on any duty and tax liability. In general, if a Minister wishes to retain a gift he or she will be

¹ The threshold for the registration of gifts in the Register of Members' Interests is currently under review. In future, the threshold for the treatment of small gifts received by Ministers (see paragraph 137(b)) will be set and updated in line with the threshold adopted for the House Register.

liable for any tax or duty it may attract.

138. Gifts given to Ministers in their Ministerial capacity become the property of the Government and do not need to be declared in the Register of Members' Interests unless the Minister wishes to keep the gift (if it is below the threshold of £140) or to purchase it (see para 137). Gifts given to Ministers as constituency MPs or members of a political Party fall within the rules relating to the Registers of Members' and Peers' Interests.

139. In the event of a Minister accepting hospitality on a scale or from a source which might reasonably be thought likely to influence Ministerial action, it should be declared in the House of Commons Register of Members' Interests (or to the Register of Lords' Interests in the case of Ministers in the House of Lords). Registration of hospitality would normally be required for hospitality over £250¹ in value.

**Acceptance of
appointments after
leaving ministerial
office**

140. On leaving office, Ministers should seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office, other than unpaid appointments in non-commercial organisations or appointments in the gift of the Government, such as Prime Ministerial appointments to international organisations. Although it is in the public interest that former Ministers should be able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety about a particular appointment. If therefore the Advisory Committee considers that an appointment could lead to public concern that the statements and decisions of the Minister, when in Government, have been influenced by the hope or expectation of future employment with the firm or organisation concerned, or that an employer could make improper use of official information to which a former Minister has had access, it may recommend a delay of up to two years before the appointment is taken up, or that for a similar period the former Minister should stand aside from certain activities of the employer.

¹ In future, the threshold for the treatment of hospitality will be uprated in line with the threshold adopted for the House Register.

10. MINISTERIAL PENSIONS

Participation in the Parliamentary Contributory Pension Fund

141. Ministers in both the Commons and the Lords have the option of participating in the Parliamentary Contributory Pension Fund (PCPF) in respect of their Ministerial salary. The House of Commons Pensions Unit will provide details of the pension benefits and the contributions payable. Ministers who have accrued pension rights in another pension scheme may, if they elect to participate in the PCPF in respect of their Ministerial salary, and if the rules of the other scheme permit, opt to have the value of those accrued rights transferred to the Fund. The Pensions Unit will advise on the additional benefits which would be secured by such a transfer payment. Ministers interested in pursuing this option should note that time limits may apply and an early discussion with the Pensions Unit is recommended.

Participation in other pension schemes

142. Ministers with accrued pension rights in another pension scheme who do not (or cannot) elect for a transfer payment may leave these as "frozen" rights in the other scheme, with no further contributions being payable during their tenure of office. Alternatively, if the rights are secured by an insurance policy (and assuming that the rules of the other scheme and the policy itself so permit) the policy could be transferred to them, either on a paid-up basis or with the right to continue payment of the premiums themselves (subject to Inland Revenue limits). Similarly, a Minister may wish to continue contributing to an existing retirement annuity contract or personal pension scheme. Ministers must be aware, though, that under no circumstances can they participate in the PCPF if they wish to continue as a contributing member of another pension arrangement (of whatever type) in respect of their Ministerial salary.

143. Ministers who expect to resume their former employment on ceasing to hold Ministerial office and who elect not to participate in the Parliamentary Fund in respect of their Ministerial salary may remain in active membership (that is, with continued payments of contributions, and with their period of office counting as continued pensionable employment) of any pension scheme relating to that employment provided that this can be done under the rules of the scheme. In these circumstances the continued contributions may be paid by the Ministers alone, or by the former employer alone, or

jointly, depending on the rules of the other scheme. As noted in paragraph 138, Ministers would not, in these circumstances, be able to participate in the PCPF in respect of their Ministerial salary.

144. It must be emphasised that any arrangements made under paragraph 142 must not go outside the terms of the particular pension scheme. There would be no objection to a general alteration of the rules of a scheme when this is necessary to permit such arrangements; but approval could not be given for the addition to the scheme of a special provision relating only to the tenure of a Ministerial Office. If Ministers have any doubts about the propriety of any arrangements they intend making, the Prime Minister's Private Secretary may be consulted.

145. Ministers who elect not to participate in the Parliamentary scheme in respect of their Ministerial salary, and who make no arrangements of the kind set out in paragraph 142, may wish to pay premiums to a personal pension or stakeholder pension scheme to provide additional pension etc, benefits for themselves or provision for their families in the event of death. Such contracts are issued subject to the limitations and conditions laid down in the Tax Acts. Tax relief on premiums is limited to a percentage of the Ministerial salary. This percentage is age-related, being 17.5% for individuals up to 35, rising to 40% for those aged 61 and over.

146. The taxation effects of arrangements such as are mentioned in the paragraphs above may vary according to the Minister's particular circumstances. The Controller, Inland Revenue Pension Schemes Office, PO Box 62, Yorke House, Castle Meadow Road, Nottingham, NG2 1BG, will be willing to explain the effects for tax purposes of any proposed arrangements under paragraph 142; he will also give, on request, further information on the legislation and reliefs available in respect of retirement annuity contracts or personal pension schemes.

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

1. MINISTERS OF THE CROWN

Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties.

This Code provides guidance to Ministers on how they should act and arrange their affairs in order to uphold these standards. It lists the principles which may apply in particular situations drawing on past precedent. It applies to all members of the Government (and covers Parliamentary Private Secretaries in section 4).

Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Code and for justifying their actions and conduct in Parliament. The Code is not a rulebook, and it is not the role of the Secretary of the Cabinet or other officials to enforce it or to investigate Ministers although they may provide Ministers with private advice on matters which it covers.

Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards, although he will not expect to comment on every allegation that is brought to his attention.

The Code should be read against the background of the overarching duty on Ministers to comply with the law, including international law and treaty obligations, to uphold the administration of justice and to protect the integrity of public life. They are expected to observe the Seven Principles of Public Life set out in the first report of the Nolan Committee, repeated in annex A, and the following principles of Ministerial conduct:

- i. Ministers must uphold the principle of collective responsibility;
- ii. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and 'next steps' agencies;
- iii. it is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead

Parliament will be expected to offer their resignation to the Prime Minister;

iv. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest which should be decided in accordance with the relevant statutes and the Government's Code of Practice on Access to Government Information;

v. Ministers should similarly require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;

vi. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;

vii. Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;

viii. Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;

ix. Ministers must not use government resources for Party political purposes. They must uphold the political impartiality of the Civil Service and not ask civil servants to act in any way which would conflict with the Civil Service Code.

Ministers must also comply at all times with the requirements which Parliament itself has laid down. For Ministers in the Commons, these are set by the Resolution carried on 19 March 1997 (Official Report columns 1046-47), the terms of which are repeated at ii. to v. above. For Ministers in the Lords the Resolution can be found in the Official Report of 20 March 1997 column 1057.

9. MINISTERS' PRIVATE INTERESTS

General principle

113. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests, financial or otherwise.

Responsibility for avoiding a conflict

114. It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, and to defend that decision, if necessary by accounting for it in Parliament. The role of the Permanent Secretary is to ensure that advice is available when it is sought by the Minister, either by providing it personally, drawing on precedent and if need be other parts of government including the Secretary of the Cabinet, or by securing the services of a professional adviser (which should be arranged through the Central Secretariat of the Cabinet Office). In cases of serious difficulty or doubt the matter may be referred to the Prime Minister for a view. But ultimately it is the responsibility of Ministers individually to order their own private lives in such a way as to avoid criticism, and the final decision about what action to take to achieve that is theirs.

Procedure

115. On appointment to each new office Ministers are advised to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should cover not only the Minister's personal interests but those of a spouse or partner, of children who are minors, of trusts of which the Minister or a spouse or partner is a trustee or beneficiary, or of closely associated persons. The list should cover all kinds of interest including financial instruments and partnerships, financial interests such as unincorporated businesses and real estate, as well as relevant non-financial private interests such as links with outside organisations, and previous relevant employment.

116. On receipt of the written list the Permanent Secretary will arrange a meeting with the Minister to discuss it and to consider what advice is necessary and from what source, and what further written information is needed. The Permanent Secretary will stand ready either to give a considered view on the issues which the Minister raises, drawing on precedent and the help of the Cabinet Office as necessary, or to arrange for expert or professional advice also to be made available to the Minister from inside or outside government. At the end of the exercise Ministers are advised to record in writing what action has been considered and taken, and to provide the Permanent Secretary with a copy of that record.

participating in any fund-raising activity, they do not place, or appear to place, themselves under an obligation as Ministers to those to whom appeals are directed (and for this reason they should not normally approach individuals or companies personally for this purpose). In any case of doubt, the Prime Minister should be consulted before a Minister accepts an association with such bodies. Ministers should also exercise care in giving public support for petitions, open letters etc.

Trade unions

122. There is, of course, no objection to a Minister holding trade union membership but care must be taken to avoid any actual or perceived conflict of interest. Accordingly, Ministers should arrange their affairs so as to avoid any suggestion that a union of which they are a member has any undue influence; they should take no active part in the conduct of union affairs, should give up any office they may hold in a union and should receive no remuneration from a union (a nominal payment purely for the purpose of protecting a Minister's future pension rights is acceptable).

Financial interests

123. Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. In order to avoid such a danger, they should be guided by the general principle that they should either dispose of any financial interest giving rise to the actual or apparent conflict or take alternative steps to prevent it. It is particularly important that the procedure described in paragraphs 115 and 116 is followed in the case of financial interests. The Permanent Secretary as Accounting Officer has a personal responsibility for financial propriety and regularity across the Department's business, and his or her advice must be given particular weight where such issues arise.

124. Two particular ways in which a conflict of financial interest, or the perception of it, can arise are as follows:

- a. from the exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or
- b. from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.

125. Apart from the risk to the Minister's reputation, two legal obligations must be born in mind:

- a. any exercise or non-exercise by a Minister (including a Law Officer) of a legal power or discretion or other influence on a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid. The courts interpret conflict of interest increasingly tightly;
- b. Ministers are bound by the provisions of Part V of the Criminal Justice Act 1993 in relation to the use or transmission of unpublished price-sensitive information obtained by virtue of their Ministerial office.

**Financial interests:
alternatives to disposal**

126. If for any reason the Minister is unable or unwilling to dispose of a relevant interest, he or she should consider, with the advice of the Permanent Secretary of the Department and, where necessary, of external advisers, (which should be raised through the Central Secretariat of the Cabinet Office) what alternative measures would sufficiently remove the risk of conflict. These fall into two types: those relating to the interests themselves, and those relating to the handling of the decisions to be taken or influenced by the Minister.

**Steps to be taken
where financial
interests are retained**

127. As regards steps other than disposal which might be taken in relation to interests, the Minister might consider placing all investments (including derivatives) into a 'blind' trust, ie one in which the Minister is not informed of changes in investments or of the state of the portfolio, but is still fully entitled to both the capital and income generated. A blind trust is only blind in the case of a widely-spread portfolio of interests, managed by external advisers. Once a blind trust has been established the Minister should not be involved or advised of decisions on acquisition or disposal relating to the portfolio. Ministers should remember that Part VI of the Companies Act 1985 allows companies to require information as to the true owners of its shares, which could result in the fact of a Minister's interest becoming public knowledge despite the existence of a trust. It should also be remembered that even with a trust the Minister could be assumed to know the contents of the portfolio for at least a period after its creation, so the protection a trust offers against conflict of interest is not complete. Alternatively a power of attorney may be suitable. However, this is a complex area and the Minister should seek professional advice because, among other things there may be tax consequences in establishing this kind of arrangement.

128. Another step which (perhaps in conjunction with other

from
~~Note of a telephone conversation between Sarah Albon and Clare~~
~~Summer 25 July 2002~~

Lee,

I rang Clare to talk about her letter of 18 July, which did not entirely make sense. (I also pointed out to her that I'd been trying to get hold of her for a week and it wasn't ideal that she was so hard to contact).

I said that the items covered in para 2 was fine, but that para 3 was difficult – it was not a case of saying the code didn't really apply – it did and the information sought was not all within the public domain. That fact that we'd never disclosed this type of information in the past was certainly not an adequate reason for failing to do so now. Clare was pretty adamant that the information requested was in the public domain – and that it should be sufficient to refer the journalist to it. There was no point arguing about this since neither of us had the original letter in front of us. [However, the one thing which did become crystal clear is that having considered the LC's advice, the PM does not want this information to be given out.] *some of*

I think that the way forward here is to see to what extent it would be valid, in the first instance to point to the publicly available data – if you think that we could get away with that even only as a holding measure – we should do so. If the request asks in terms for non-publicly available info then I think we will need to go back to No.10 and spell out once more the grounds that we can suggest for refusing – and ask them to pick an option.

Finally, you will see that Clare points out that this shouldn't have taken a year – I did make the point quite strongly that it wasn't us sitting on it for this length of time.

Sarah

*(This is a note reflecting Sarah Albon's opinion
and was not agreed with Clare Summer.)*

Gray Sue - Machinery of Government Secretariat -

From: Hughes, Lee [lee.hughes@lcdhq.gsi.gov.uk]
Sent: 31 July 2002 11:51
To: 'sue.gray@cabinet-office.x.gsi.gov.uk'
Subject: Ombudsman's Investigation

Sue

We are missing each other on the telephone, so a quick e mail (would still like a chat if possible).

You will, I hope, have seen the Ombudsman's letter to Sir Hayden Phillips and to Sir David Omand seeking access to all the documents relating to Rob Evans' request for information about Ministerial gifts. I have advised Sir Hayden and the Lord Chancellor that we have to disclose these records, but that some of the documents are sensitive. We have set up a meeting tomorrow, 1130 at No 10, to discuss the issue with Clare Sumner. I will bring our dossier of papers we consider we have to disclose to that meeting. I hope you, or someone from central secretariat can come, and can bring your set of relevant papers too.

We need to act quickly as the deadline for replying to the Ombudsman is 9 August. Given the delays in this case to date, he will not look kindly on further prevarication.

Lee

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Ghosh Helen - Machinery of Government Secretariat -

From: Ghosh Helen - Central Secretariat -
Sent: 18 July 2002 12:36
To: PS Sir Richard Wilson
Subject: RE: Letter from Clare Sumner to Sarah Alban

I talked to Clare about this yesterday. Effectively the outcome is as Sir Richard advised - but as Clare says, the embarrassment is that it's taken so long to reach this point. The action is now for LCD to tell Depts what line to take. We'll keep in touch with Lee Hughes. H

-----Original Message-----

From: Candler Paul - Cabinet Secretary's Office - On Behalf Of PS Sir Richard Wilson
Sent: 18 July 2002 12:33
To: Ghosh Helen - Central Secretariat -; Gray Sue - Central Secretariat -; Pugh Sally - Central Secretariat -
Subject: FW: Letter from Clare Sumner to Sarah Alban

grateful for advice on next steps...!

Paul

-----Original Message-----

From: Private Office Despatch
[mailto:PrivateOfficeDespatch@no10.x.gsi.gov.uk]
Sent: 18 July 2002 12:29
To: LCO (RESTRICTED)
Cc: Fletcher Ian - CSO; PS Sir Richard Wilson
Subject: Letter from Clare Sumner to Sarah Alban

<<CODE OF PRACTICE_ REQUEST FOR INFORMATION FROM THE GUARDIAN.doc>>

Ghosh Helen - Machinery of Government Secretariat -

From: Ghosh Helen - Central Secretariat -
Sent: 17 July 2002 17:53
To: 'lee.hughes@homeoffice.gsi.gov.uk'; Gray Sue - Central Secretariat -; Pugh Sally - Central Secretariat -
Subject: FOI REQUESTS

Just a quick note to record a conversation I've just had with Clare S. The PM has agreed with advice that Depts shd refuse all the requests except for that on gifts, but in that case shd simply refer to the info on gifts already in the public domain (asset register and MPs list). She'll be minuting formally. The PM was very concerned about the delay, and I said we could only apologise profusely! Presumably Lee will now titivate the guidance to Depts on answering? H



HOUSE OF LORDS,
LONDON SW1A 0PW

c: Helen Ghosh

Sue Gray

5/7

PRIME MINISTER

**CODE OF PRACTICE ON ACCESS TO GOVERNMENT INFORMATION:
REQUESTS FOR INFORMATION FROM ROB EVANS**

I am writing to seek your agreement to issue guidance to colleagues that they should disclose information about gifts received by Ministers, as sought by Rob Evans (a "Guardian" journalist) under the Code of Practice or Access to Government Information. Moreover, I propose that we adopt a procedure for reporting such gifts, proactively, annually. Lack of openness about gifts to Ministers will provide ammunition to those who are busy in many different ways asserting that we lack integrity as a government. In particular, the Government cannot afford to be branded as 'secret' and 'obstructive' at a time when we are starting to promote FoI to 80,000 public bodies in England and Wales.

As this request for information has been outstanding since April last year, we need to move quickly to avoid criticism from the Parliamentary Commissioner for Administration. I would therefore welcome a reply by 17 July.

Rob Evans wrote to all Departments seeking information under the terms of the Code of Practice on Access to Government Information. He asked:

- i. how many gifts have Ministers reported to their Permanent Secretaries under the terms of the Ministerial Code of Conduct since January 1998, the nature, value and donor of all the gifts and copies of the documents reporting the gifts;
- ii. for a list of meetings held between Ministers and outside interest groups since July 2001, the names of those present and the purposes of each meeting;
- iii. how many meetings Ministers have had with representatives of:
 - a. Esso/Exxon Mobil, and
 - b. Powderject

since January 1999, when and where the meetings took place and who attended. He also asked for information on how many times Ministers have written to these companies, the dates and signatories of the letter and the number and dates of "representations" on behalf of these two companies made by Ministers to other parties;

- iv. the Government to reconsider the earlier refusal by Departments to reveal information about consultation by Ministers with their Permanent Secretaries about financial interests or conflicts of interest.

This information has been sought in a series of requests from Mr Evans, the first dating back to April 2001. Responsibility for issuing guidance on round robin requests under the Code of Practice on Access to Government Information now rests with me. But, as the information relates to the operation of the Ministerial Code of Conduct, my officials consulted the Cabinet Office central secretariat. In the light of those discussions, I am setting out my views on the issue. We need to make progress, as Rob Evans has asked Oona King to raise the failure to reply to his requests with the Parliamentary Commissioner (the Ombudsman). I understand that she has agreed to do so, though so far we have not received any indication from the Ombudsman that he intends to take up the case. It seems inevitable, however, that he will.

On the issue of gifts, we have three basic options:

- i. disclose the relevant information;
- ii. claim exemptions under the Code of Practice on Access to Government Information on grounds of harm to international relations, unwarranted invasion of privacy or breach of confidentiality (depending on the donor), or,
- iii amend the Code of Practice on Access to Government Information to exclude from its ambit information which is covered by the Ministerial code of conduct.

Whatever we decide to do we are going to attract media criticism because of the length of time it has taken to respond to the initial request from Evans in April 2001. We should aim to minimise this.

Option i.

I do not believe that disclosing the information will cause the Government any real harm. It has been customary, under this and previous governments, for Ministers receiving courtesy calls from visiting Ministers from abroad to be offered and to accept gifts from the visitor, very often symbolising the political or cultural tradition of the country from which the visitor comes. Most of the gifts we receive are given as a courtesy, have to be accepted as a matter of courtesy, have little value, and do not reflect a desire to purchase influence. I would be perfectly happy to disclose the comprehensive list of gifts in my Department over the period in question.

There is nothing in it which merits us claiming exemptions under the Code. I assume that most Departments will have a similar list. If, exceptionally, there are a few gifts whose disclosure would cause real difficulties for a particular Department, we would have a better chance of successfully claiming an exemption if we limited the claim to those specific gifts.

I recommend that we go further and announce that each Department will provide such information pro-actively, say annually. This will ensure that donors know that when they offer gifts to Ministers there is transparency in the system and that their gifts will become public knowledge.

By disclosure we would gain some goodwill in an area where we have been criticised for rowing back from our promises in Opposition and accused of bad faith in the implementation of our policies. Lack of openness on our part about gifts to Ministers will provide ammunition to those who are busy in many different ways asserting that we lack integrity as a government.

Handling. Although the press will undoubtedly have some fun with the lists, disclosure will not hand the media an opportunity to mount a sustained level of criticism against the Government. Opportunities to criticise would be minimised further still if all Departments were to provide their lists to Evans at the same time.

It could well be that other reporters may decide to ask for their own copies of the lists as a result of the efforts of Evans, but the critical time period would be finite. It would provide an opportunity to close the issue down.

Recommendation. For these reasons I recommend that we disclose this information.

Option ii.

If we adopt the second option, it seems likely that Ombudsman would reject most, if not all, our claims for exemption. He would criticise us for not asking the donors whether they objected to the information sought being disclosed. There is a likelihood that he will find, whatever the expressions of confidentiality or privacy that were made when the gifts were received, that the public interest in good governance and the avoidance of suspicion of improper influence on Ministers requires that the information be disclosed. We will then be faced with a report from the Ombudsman recommending disclosure which will be very difficult for us to resist.

Handling. The press will pursue this with some tenacity on the grounds of "what are you trying to hide?" This would result in a sustained period of criticism - to which the media could return as and when it suited them - and to which there would be little of substance to offer in way of rebuttal.

Such a course of action would not enable us to close the issue down.

Recommendation. I do not recommend this course of action on the grounds that it offers nothing in the way of addressing the problem.

Option iii.

If your view is that no information on this subject can be disclosed, then we should recognise that we will be facing a constant succession of adverse reports from the

Ombudsman on our failure to disclose information – it is unlikely that the press will give up on this, or similar issues.

We should therefore consider whether to amend the Code of Practice on Access to Government Information to exclude from its ambit information which is covered by the Ministerial Code of Conduct. This will provide some clarity and remove the Ombudsman's ability to investigate decisions in these cases.

Handling. We will face considerable criticism for limiting the scope of the Open Government Code and, as I have noted above, we can ill afford further criticism in this area. Nonetheless, if we refuse to disclose this information we will have to face such criticism anyway.

We may want to get the worst of it over now, and avoid the constant drip of hostility each time the Ombudsman issues a critical report. However, once again, this option would not enable us to close the issue down permanently.

Recommendation. I canvass this option with reluctance, as it fails to draw a clear line under the issue and would provide our critics with an additional argument (which they can run whenever they chose) that the government lacks integrity.

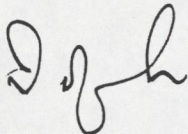
Other Matters

On the other questions Rob Evans asks, we should continue to adopt our line that we do not confirm or deny individual meetings between Ministers and companies, on grounds of commercial confidentiality.

In my view we should also decline to reconsider the earlier refusal to reveal information about consultation by Ministers with their Permanent Secretaries about financial interests, or conflicts of interests (a round robin request originated by Andrew Robathan MP). Our grounds – that such a disclosure would be an unwarranted invasion of the privacy of Ministers - is in my view a good one: I think the Ombudsman made a wrong call on this decision. We have weathered the pain of the adverse report from the Ombudsman in this case and I see no reason to revisit our decision.

I would be grateful for your views.

I am copying this minute to Sir Richard Wilson.



LORD CHANCELLOR

July 2002



Permanent Secretary and
Clerk of the Crown in Chancery

Sir Hayden Phillips GCB

c Helen Ghosh
Sue Gray

HOUSE OF LORDS
LONDON SW1A 0PW

Tel. 020 7219 3246
Fax. 020 7219 2075

22 July 2002

Sir Richard Wilson GCB
Secretary to the Cabinet
and Head of the Home Civil Service
Cabinet Office
70 Whitehall
LONDON SW1A 2AS

John Richardson

Code of Practice on Access to Government Information: Requests for Information from Rob Evans

I discussed the Code of Practice issue with the Lord Chancellor a few days ago and he felt he would like to set out his views to the Prime Minister. I enclose the draft minute we have given to him which advocates a choice between disclosure of gifts (preferred) and taking information flowing from the Ministerial Code out of the ambit of the Code of Practice (less preferred). I hope that this approach will not get in the way of advice you may have given, or are considering giving, to the Prime Minister on this subject.

John Evans
Ayl

10 972760208 P.03
Draft minute to the Prime Minister for signature by the Lord Chancellor

Prime Minister

**CODE OF PRACTICE ON ACCESS TO GOVERNMENT INFORMATION:
REQUESTS FOR INFORMATION FROM ROB EVANS**

I am writing to seek your agreement to issue guidance to colleagues that they should disclose information about gifts received by Ministers, as sought by Rob Evans (a "Guardian" journalist) under the Code of Practice on Access to Government Information. Moreover, I propose that we adopt a procedure for reporting such gifts, proactively, annually. Lack of openness about gifts to Ministers will provide ammunition to those who accuse the Government of not being trustworthy. In particular, the Government cannot afford to be branded as 'secret' and 'obstructive' at a time when we are starting to promote F&I to 80,000 public bodies in England and Wales.

As this request for information has been outstanding since April last year, we need to move quickly to avoid criticism from the Parliamentary Commissioner for Administration. I would therefore welcome a reply by 17 July.

Rob Evans wrote to all Departments seeking information under the terms of the Code of Practice on Access to Government Information. He asked:

- i. how many gifts have Ministers reported to their Permanent Secretaries under the terms of the Ministerial Code of Conduct since January 1998, the nature, value and donor of all the gifts and copies of the documents reporting the gifts;
- ii. for a list of meetings held between Ministers and outside interest groups since July 2001, the names of those present and the purposes of each meeting;
- iii. how many meetings Ministers have had with representatives of

- a. Esso/Exxon Mobil, and
- b. Powderject

since January 1999, when and where the meetings took place and who attended. He also asked for information on how many times Ministers have written to these companies, the dates and signatories of the letter and the number and dates of "representations" on behalf of these two companies made by Ministers to other parties;

iv. the Government to reconsider the earlier refusal by Departments to reveal information about consultation by Ministers with their Permanent Secretaries about financial interests or conflicts of interest.

This information has been sought in a series of requests from Mr Evans, the first dating back to April 2001. Responsibility for issuing guidance on round robin requests under the Code of Practice on Access to Government Information rests with me. But, as the information relates to the operation of the Ministerial Code of Conduct, my officials consulted the Cabinet Office central secretariat. In the light of those discussions, I am setting out my views on the issue. We need to make progress with this matter, as Rob Evans has asked Oona King to raise the failure to reply to his requests with the Parliamentary Commissioner (the Ombudsman). I understand that she has agreed to do so, though so far we have not received any indication from the Ombudsman that he intends to take up the case. It seems inevitable that he will.

On the issue of gifts, I believe that we have three options:

- i. disclose the relevant information;
- ii. claim exemptions under the Code of Practice on Access to Government Information on grounds of harm to international relations, unwarranted invasion of privacy or breach of confidentiality (depending on the donor), or;

iii amend the Code of Practice on Access to Government Information to exclude from its ambit information which is covered by the Ministerial code of conduct.

Whatever we decide to do we are going to attract some media criticism because of the length of time it has taken to respond to Evan's initial request in April 2001. We should aim to minimise this.

Option i.

I do not believe that disclosing the information will cause the Government any serious harm. Most of the gifts we receive are given as a courtesy, have little value, and cannot be presented as an intention to purchase influence. I attach a list of gifts received by Ministers in my Department over the period in question.

There is nothing there which merits us claiming exemptions under the Code. I assume that most Departments will have a similar list. If, exceptionally, there are a few gifts whose disclosure would cause real difficulties for a particular Department, we would have a better chance of successfully claiming an exemption if we limited the claim to those specific gifts.

I think we should go further and announce that each Department will provide such information pro-actively, say annually. This will ensure that donors know that when they offer gifts to Ministers there is transparency in the system and that their gifts will become public knowledge.

By disclosure we would gain some goodwill in an area where we have been criticised for rowing back from our promises in Opposition and accused of bad faith in the implementation of our policies. As mentioned earlier, lack of openness on our part about gifts to Ministers will provide ammunition to those who may wish to accuse the Government of not being trustworthy.

Government's lack of trustworthiness.

Other Matters

On the other questions Rob Evans asks, we should continue to adopt our line that we do not confirm or deny individual meetings between Ministers and companies, on grounds of commercial confidentiality.

With regard to the request to reconsider the earlier refusal to reveal information about consultation by Ministers with their Permanent Secretaries about financial interests, or conflicts of interests (a round robin request originated by Andrew Robathan MP), I

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03-JUL-2002 08:25

P.06

LH021cd:jd

Option III.

If we are reaching a view that no information on this subject can be disclosed, then we should recognise that we will be facing a constant succession of adverse reports from the Ombudsman on our failure to disclose information – it is unlikely that the press will give up on this, or similar issues.

We should therefore consider whether to amend the Code of Practice on Access to Government Information to exclude from its ambit information which is covered by the Ministerial Code of Conduct. This will provide some clarity and remove the Ombudsman's ability to investigate decisions in these cases.

Handling. We will face considerable criticism for limiting the scope of the Open Government code and, as I have noted above, we can ill afford further criticism in this area. Nonetheless, if we refuse to disclose this information we will have to face such criticism anyway.

We may want to get the worst of it over now, and avoid the constant drip of hostility each time the Ombudsman issues a critical report. However, once again, this option would not enable us to permanently close the issue down.

Recommendation. I only reluctantly recommend this option, as it fails to draw a clear line under the issue as it will provide our critics with a permanent example of the Government's lack of trustworthiness.

Handling. Although the press will undoubtedly have some fun with the lists, disclosure will not hand the media an opportunity to mount a sustained level of criticism against the Government. Opportunities to criticise would be minimised further still if all Departments were to provide their lists to Evans at the same time.

It could well be that other reporters may decide to ask for their own copies of the lists as a result of Evan's efforts, but the critical timeframe would be finite. It would provide an opportunity to close the issue down.

Recommendation. For these reasons I recommend that we disclose this information.

Option ii.

If we adopt the second option, it seems likely that Ombudsman would reject most, if not all, our claims for exemption. He would criticise us for not asking the donors whether they objected to the information sought being disclosed. There is a likelihood that he will find whatever expressions of confidentiality or privacy that were made when the gifts were received, that the public interest in good governance and the avoidance of suspicion of undue influence on Ministers requires that the information is disclosed. We will then be faced with a report from the Ombudsman recommending disclosure which will be very difficult for us to resist.

Handling. The press will pursue this with some tenacity on the grounds of "what are you trying to hide?" This would result in a sustained period of criticism - to which the media could return as and when it suited them - and to which there would be little of substance to offer in way of rebuttal.

Such a course of action would not enable us to close the issue down.

Recommendation. I do not recommend this course of action on the grounds that it offers nothing in the way of addressing the problem.

think we should continue to resist disclosure. Our grounds – that such a disclosure would be an unwarranted invasion of the privacy of Ministers, is in my view a good one, and I believe that the Ombudsman made a wrong call on this decision. We have weathered the pain of the adverse report from the Ombudsman in this case and I see no reason to revisit our decision.

I would be grateful for your views.

I am copying this minute to Sir Richard Wilson.

LH02ld:jd

Gifts received by ministers 1 January 1998 - 30 April 2001

Minister	Gift	Donated by/	Date received
	Book of Poetry by Young Offenders 'If I could fly'	Visit to Orchard Lodge, Young Offenders Institution,	29 June 2000
	Books 'Treasures of Canada', 'Ontario', 'Island of Hope (Ontario's Parks & Wilderness)'	Official Visit to Canada	15 Sept 2000
	Coffee Mug	Outgoing American Ambassador, Phillip Laeder	Feb 2001

David Lock	2 Lacquered bowls	Supreme People's Procuratorate, China,	Nov 1999
	Book on Los Angeles	Los Angeles County Board of Supervisors	Jan 2000
	Glass Paperweight	Legal Services Corporation, America	July 2000
	Small Indian Elephant God	Justice Reddy, Head of Indian Law Commission - Official Visit to India,	Oct 2000
	Coffee Mug	Outgoing American Ambassador, Phillip Laeder	Feb 2001

Lord Bach	Paperweight and book, ' <i>Consejo de Stado</i> '	Visit to Spain	14 Feb 2001
	Tie and a book, ' <i>Encyclopaedia of Penal Establishment</i> '	Slovakia Prison Service	7 March 2001
	Book	Deputy Minister of Justice, Prague	25 Jan 2001

Gifts received by ministers 1 January 1998 – 30 April 2001

Minister	Gift	Donated by/	Date received
	CD & Book	President of Brandenburg	29 Nov 2000
	Silver Cigar Box	President of Senate of Mexico	24 Jan 2001
	Silk Tie, and small Chinese cultured pearl string for Lady Irvine	Chinese Ambassador	18 Jan 2001
	Teacup, Book	Hungarian Minister of Justice	5 Feb 2001
	Small Silver Ashtray	Portuguese Interior Minister	13 Feb 2001
	Book on Public Prosecution Department	Spanish Attorney General	14 Feb 2001
	Books on Spanish Supreme Court	President of Spanish Supreme Court	14 Feb 2001
	Silver Bookmark	Spanish Minister of Justice	14 Feb 2001
	Medal	Spanish Minister of Justice	14 Feb 2001
	2 Books on Ministry of Justice	Spanish Minister of Justice	14 Feb 2001
	Book on Bar Association	Dean of Madrid Bar Association	14 Feb 2001
	Book on Bar Association	Dean of Madrid Bar Association	14 Feb 2001
	Book "The Laws of Las Siete Partidas"	Dean of Madrid Bar Association	14 Feb 2001
	Book - 'The White House Dinner Collection'	Unidentified donor	14 Feb 2001
	Commemorative Coins	Georgian Speaker	28 Feb 2001
	Book, Aluminium Model of a Beaver	Chief Justice of Alberta, Canada	2 Mar 2001
	Dragon Ball Tea & Ashtray	Secretary for Justice, Hong Kong	5 Mar 2001
	Book, Plate	Philip Lader, US Ambassador	8 Mar 2001
	Book "Romania"	President of Romania	23 Apr 2001

Geoff Hoon	3 Pens	Walsall Metro Borough Council (Opening of new CAB)	29 Jan 1998
	Tie Pin	Visit of Finnish Ministry of Justice	21 April 1998
	Paperweight	AMO - Annual Conference	24 April 1998
	Book - 'Ministry of Justice and It's Art', Madrid	Visit to Spain	7 May 1998
	Miniature Model Boat	Courtesy Visit - Maltese Minister of Justice	18 May 1998

Gifts received by ministers 1 January 1998 – 30 April 2001

Minister	Gift	Donated by/	Date received
	Court		
	Box	Delegation of Chinese Judges	19 Oct 1999
	Decorative Pewter Plate	Cambodian Minister of Justice	20 Oct 1999
	Commemorative Stamps	Minister Li Hui, Chinese Minister for Hong Kong	21 Oct 1999
	Small Buddha Statue, Paper Knife	Speaker of the Parliament of Nepal	22 Oct 1999
	Vase	Chinese Government	28 Oct 1999
	Chocolate	Hinduja foundation	29 Nov 1999
	Tie	European Atlantic Group	8 Nov 1999
	ICJ Yearbook	British Embassy, Hague	12 Nov 1999
	Book "The Law in Crisis"	CG Weeramantry	12 Nov 1999
	ICJ (Book)	International Court of Justice	12 Nov 1999
	UN Charter (Book)	International Court of Justice	12 Nov 1999
	Collection of Conventions (Book)	International Court of Justice	12 Nov 1999
	Celebration (Book)	Hague Conference	12 Nov 1999
	Small Vase	Deputy Prime Minister of the Czech Rep.	23 Nov 1999
	Plate	Estonian Ambassador	2 Feb 2000
	Cuddly Toy Dragon and Plaque	Chinese Ambassador	4 Feb 2000
	2 Painted Eggs and Wooden Stands	South African Justice Minister	21 Feb 2000
	Vase	Hungarian First Minister	6 Apr 2000
	Engraving	Chinese Minister of Justice	7 Apr 2000
	Picture	Minister of Justice Indonesia	11 Apr 2000
	Painted Egg, 3 CDs & Book	Romanian Ambassador	20 Apr 2000
	Wooden Box	Australian Senator, Margaret Rend	7 Jul 2000
	Picture	Dutch Speaker of Parliament	5 Jul 2000
	Book	Cypriot Parliament	7 Jul 2000
	Book and Cassette Tapes	M Nastase, Romanian Opposition Leader	27 Jul 2000
	Gallery Catalogue	Art Gallery of New South Wales	Sep 2000
	<i>A History of the University of Sydney</i>	University of Sydney	Sep 2000

Minister	Gift	Donated by/	Date received
Lord Chancellor	Painting	Attorney General of Trinidad & Tobago	5 - 11 Jan 1998
	Photos and Video of Speech	Attorney General of Trinidad & Tobago	5 - 11 Jan 1998
	Wooden Box, Miniature Steel Pan	Speaker of House of Representatives, Trinidad & Tobago	5 - 11 Jan 1998
	2 Cushion Covers	President of Senate, Trinidad & Tobago	5 - 11 Jan 1998
	Indian Metalwork Tray		5 - 11 Jan 1998
	CD	Minister of Community Development, Trinidad & Tobago	5 - 11 Jan 1998
	Book	National Museum	5 - 11 Jan 1998
	Craftwork	Justice Naimudin Ahmed, Law Commission of Bangladesh	23 Jan 1998
	Medallion (Ceremonial)	Guy Cavinet, Cour de Cassation	27 Feb 1998
	Medallion (Ceremonial)	Pierre Truche	27 Feb 1998
	Book on Conseil D'Etat	Renaux Denoix de Saint-Març	27 Feb 1998
	Soapstone Walrus	Speaker Molgat (Canadian Senate)	2 Mar 1998
	Chinese Vase	Prime Minister of China	2 Apr 1998
	Paperweight, Book	Delaware Judges	7 Apr 1998
	Cufflinks	Finnish Minister of Justice	21 Apr 1998
	Clock	Prime Minister of Japan	1 May 1998
	Book on "The Senate of the Roman Republic"	Senator Robert C Byrd	12 May 1998
	2 books	Israeli Minister of Justice	22 May 1998
	Book on History of Malaysian Legal Profession	Chairman of Malaysian Bar Association	9 Jun 1998
	Vase	Prime Minister of Japan	1 Jun 1998
	Wristwatch	Solicitor General of Hong Kong	10 Jun 1998
	Picture	President of Australian Senate	11 Jun 1998
	Silver Bowls (small)	Emperor & Empress of Japan	24 Jun 1998
	Book of Watercolours	KPMG	24 Jun 1998
	China Plate	Vietnamese Parliamentarians	29 Jun 1998

Pugh Sally - Machinery of Government Secretariat -

From: Fredericks, Camelia [Camelia.Fredericks@hm-treasury.x.gsi.gov.uk]
Sent: 24 June 2002 18:50
To: 'Pugh Sally - Central Secretariat -'
Subject: RE: Requests under the Code of Practice on Access to Government Information
Importance: High

Sally,

We received a request from Rob Evans on the 10th June on meetings with BioIndustry Association and department ministers. Could you let us know whether a similar request was received by yourselves?
And if so, could you please advise?

Thanks

Camelia

-----Original Message-----

From: Pugh Sally - Central Secretariat -
[mailto:Sally.Pugh@cabinet-office.x.gsi.gov.uk]
Sent: 17 April 2002 12:12
To: 'Fredericks, Camelia'
Subject: RE: Requests under the Code of Practice on Access to Government Information

Camelia

Thanks. I have subsequently been in touch with Kate directly about both requests and let her know that we will be in touch with her shortly.

Sally

-----Original Message-----

From: Fredericks, Camelia
[mailto:Camelia.Fredericks@hm-treasury.x.gsi.gov.uk]
Sent: 17 April 2002 12:01
To: 'sally.pugh@cabinet-office.x.gsi.gov.uk'
Cc: Jenkins, Kate
Subject: Requests under the Code of Practice on Access to Government Information

Sally,

I have recently started working in the FOI Unit and am supporting Kate Jenkins.

Attached is a request from Rob Evans that we received on the 16th April. Would appreciate some advice on it.

Also, I believe Kate has sent you a request from Rob Blackie dated the 14th February. Would you have any information on the abovementioned, as we are running out of time on this?

If you have any inquiries, please do not hesitate to contact me.

Thank you.

Kind regards,
Camelia Fredericks

<<17april2.TIF>>

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Ghosh Helen - Machinery of Government Secretariat -

From: Ghosh Helen - Central Secretariat -
Sent: 21 June 2002 13:40
To: 'lee.hughes@homeoffice.gsi.gov.uk'
Cc: Gray Sue - Central Secretariat -; Pugh Sally - Central Secretariat -
Subject: CONVERSATION WITH CLARE SUMNER

Cd we have a word about this when you have a moment? Clare Sumner rang this morning, and the outcome of our discussion was that:

a. her instinct wd be to go for offering info about meetings with PowderJect and Exxon, on similar grounds to the release of info about DTI meetings; she agreed that we shd persist in the attempt to get DH and DTI to let us know what the information wd look like [for us]

b. that the argument against disclosure of gifts for No 10 has always been that it might embarrass foreign donors - is that a valid Code exemption, she asked? [for you]

c. she thinks that it would be very helpful to put in Richard's note alongside some written advice from the Lord Chancellor, as the Minister formally responsible for the policy, rather than rely on the opportunity arising for an informal word. Could you arrange this? Have you had any response to your recent submission?

H (I'm in only briefly this afternoon but around reasonably consistently on Monday).



Secretary of the Cabinet and Head of the Home Civil Service

bcc

Helen Ghosh

PRIME MINISTER

REQUESTS FROM ROB EVANS OF THE GUARDIAN UNDER THE CODE OF PRACTICE ON ACCESS TO GOVERNMENT INFORMATION

Rob Evans of the Guardian has written to all Departments, seeking information under the terms of the Code of Conduct on freedom of information about (a) Ministerial meetings since July 2001; (b) meetings and correspondence with representatives of PowderJect or Esso/Exxon and representations Ministers have made to "other parties" on their behalf since January 1999; (c) details of gifts Ministers have received since January 1998; and (d) to reconsider the decision not to reveal the numbers of approaches made by Ministers to their Permanent Secretaries about conflicts of interest (the Robathan case). The Lord Chancellor's Department needs to finalise advice to departments on how they should respond.

2. I know you have misgivings about requests of this kind but I think that there are strong arguments against a blanket refusal to give any of this information. At the very least, I believe that Departments should release information about gifts to Ministers with a value of more than £125. Refusal to provide any of this information is likely to result in a high profile appeal to the Ombudsman which I believe we will lose, with attendant bad publicity. I am afraid I see these requests as the shape of things to come on freedom of information, with increasing pressure from Parliament and the media to be more open and growing criticism of the Government *if we refuse.*

3. Rob Evans has made the following requests for information:

- i. how many gifts Ministers have reported to their Permanent Secretary under the terms of the Ministerial Code since January 1998, the nature, value and donor of the gift and copies of the documents reporting the gift;
- ii. a list of meetings held between Ministers and outside interest groups since July 2001, the names of those present and the purposes of each meeting. Again, this is information required to be held under the terms of paragraph 63 of the Ministerial Code;

iii. how many meetings Ministers have had with representatives of (a) Esso/ExxonMobil and (b) Powderject since January 1999, when and where the meetings took place and who attended. He also asks for information on how many times Ministers have written to these companies, the dates and signatories of the letters, and the number and dates of "representations" on behalf of these two companies made by Ministers to other parties. Again, the information on meetings is required to be kept under the terms of the Ministerial Code and Departments routinely keep copies of all Ministerial correspondence. It would be more difficult to define exactly what constituted a representation to another party and therefore whether any records were kept;

iv. to reconsider the earlier refusal by Departments to reveal information about consultation by Ministers with their Permanent Secretaries about financial interests or conflicts of interest.

4. This last request, item iv, has already been the subject of a critical report from the Ombudsman in the Robathan case. John Gieve and I are appearing before PASC on it on 11 July; and imagine that you will not want to change your stance on it in response to this request. The refusal was based on two exemptions in the Code, on the disclosure of internal discussion and advice, and the protection of personal privacy. The justification for refusal is reinforced by the changes made in July 2001 to the Ministerial Code which set up the new system of requiring Ministers, on appointment, to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict of interest although these lists will not normally be made public.

5. Of the requests about gifts, the Lord Chancellor's Department advise us that the test is whether the actual harm which disclosure would cause would outweigh the public interest in disclosure. There is a readacross between the Ministerial Code and the Register of Members' Interests with an acknowledgement in the Code that gifts worth more than £125 should be declared in the Members' Register. I therefore believe that the scale of disclosure could be limited by sticking to the £125 threshold already applied in the Members' Register of Interests (and therefore where many of these gifts already appear). The level of £125 is the threshold for the period 2 May 1997 to 14 May 2002. Since 15 May 2002, the limit has been increased to £550. However, I would recommend that we use the old figure on the basis that it covers the majority of the period in question.

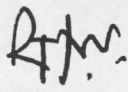
6. The request for information about meetings and representations, and in particular that relating to Powderject and Esso/ExxonMobil is clearly sensitive. As you know, Government policy is that information about

meetings between Ministers and others should not be disclosed, on the grounds that some of these meetings are held on a confidential basis, although Ministers retain the right to disclose details where they judge it right to do so. An exception to this policy was made in the case of meetings between DTI Ministers and Enron where it was made clear at the time of disclosure that it remains the Government's policy not to provide details of Ministerial meetings but that because of unsubstantiated and unjustified allegations against the Government it was thought right to make clear, without setting a precedent, where there had been meetings between the DTI and Enron as that was the lead department dealing with energy policy.

7. In the case of some Ministerial meetings, there may be an issue of commercial confidentiality and this is a valid exemption under the Code. If Departments think this applies in the case of any Ministerial meetings and in particular to meetings with Powderject and Esso, then they would have clear grounds for refusal to disclose on that basis alone. In all other cases, we have to rest on the exemptions in the Code relating to Internal Discussion and Advice and the Effective Management of the Public Service. In refusing to give any information about meetings, whether with Powderject/Esso or others, it is not clear that the overriding harm test would be met.

8. While a refusal to reveal any information about meetings is consistent with existing policy, it will undoubtedly be interpreted as a cover-up. The same is almost certainly true about non-disclosure of correspondence with Powderject or Esso/Exxon and "representations" made on their behalf. While none of this may justify reversal of the previous policy on disclosure of information about meetings, and accepting that it is almost certainly the case that Mr Evans will anyway make a formal complaint to the Ombudsman the Government would undoubtedly put itself in a better position if it were to agree to at least one of Mr Evans' requests for disclosure. The release of limited information about gifts seems the least damaging candidate.

9. When you have reached a view, it will be for the LCD formally to circulate advice to all Departments. You may want to talk to Derry Irvine about the issues and presentation.



RICHARD WILSON

18 June 2002

Gray Sue - Machinery of Government Secretariat -

From: Hughes Lee [Lee.Hughes@homeoffice.gsi.gov.uk]
Sent: 14 June 2002 10:06
To: 'helen@ghosh194.freemove.co.uk'; 'sue.gray@cabinet-office.x.gsi.gov.uk';
'sally.pugh@cabinet-office.x.gsi.gov.uk'
Subject: RE: NOTE TO THE PM

Helen

A few suggestions.

We spoke. Could we argue that gifts over £140 are in the Members' register anyway, and in the public domain. Therefore we could either disclose without giving away anything new, or refer Rob Evans to the register (might not work for the Lords)? Difficulty would be if Ministers have not registered some gifts over £140.

As for gifts under £140, the "sleaze" argument applies, of course. But we could be firm and say that the Ministerial Code only requires gifts over £140 to be declared and it would be an unwarranted invasion of privacy to require Ministers to do more than that, or try to claim that the information could only be obtained at disproportionate cost, or would adversely affect the efficiency of government (convenient, but probably untrue!).

Given the current political climate and distrust of Ministers' motives, I really think the least damaging way forward would be to disclose all gifts under £140 too. If any are particularly sensitive we could advise Departments that they could use a Code exemption on a case by case basis, as appropriate (eg intrusion of privacy of the donor).

I will finalise my advice to the LC when we have settled the line to offer SRW. I will e mail my submission to you idc.

Lee

-----Original Message-----

From: Ghosh Helen - Central Secretariat -
[mailto:helen.ghosh@cabinet-office.x.gsi.gov.uk]
Sent: 13 June 2002 20:21
To: 'lee.hughes@homeoffice.gsi.gov.uk'; Gray Sue - Central Secretariat
-; Pugh Sally - Central Secretariat -
Subject: NOTE TO THE PM

As discussed a shot at a draft. As I mentioned to Sue, I've tried to keep the argument clear: that it will look very bad if you give information on nothing and (of the various options) gifts look the best option. I don't think we need to trouble the PM with lots of stuff about technical grounds for exemption, though I hope I've put enough of that it (possibly correctly!) to give him a flavour. Anyway, the punchline is that he shd speak to the LC! Comments welcome. I'll be in touch with Sue about finalising it and, as I've said, do contact me at home to discuss as necessary. H <<EVANS.doc>>

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From: HELEN GHOSH
DIRECTOR, CENTRAL SECRETARIAT

Phone: 020 7276 2450

Fax: 020 7276 2496

e-mail: helen.ghosh@cabinet-office.x.gsi.gov.uk

14 June 2002

Cc Lee Hughes – LCD

Sue Gray

Sally Pugh

SIR RICHARD WILSON

**ADVICE FOR THE PRIME MINISTER ON FOI REQUESTS FROM ROB
EVANS OF THE GUARDIAN**

You asked for a draft note to put to the Prime Minister on the question of how Departments should respond to the series of requests from Rob Evans under the FOI Code of Practice. I've agreed this draft with Lee Hughes.

As you'll see, the draft suggests that the Prime Minister should have a word with the Lord Chancellor before reaching a final view. I understand from Lee that he has yet to be formally consulted about the issues.

HELEN GHOSH

DRAFT MINUTE TO THE PRIME MINISTER

REQUESTS FROM ROB EVANS OF THE GUARDIAN UNDER THE CODE OF PRACTICE ON ACCESS TO GOVERNMENT INFORMATION

Rob Evans of the Guardian has written to all Departments, seeking information under the terms of the FOI Code of Conduct, about (a) Ministerial meetings since July 2001; (b) meetings and correspondence with representatives of PowderJect or Esso/Exxon and representations Ministers have made to "other parties" on their behalf since January 1999; (c) details of gifts Ministers have received since January 1998; and (d) to reconsider the decision not to reveal the numbers of approaches made by Ministers to their Permanent Secretaries about conflicts of interest (the Robathan case). The Lord Chancellor's Department needs to finalise advice to departments on how they should respond.

I think that there are strong arguments against a blanket refusal to give any of this information, although I know that this is the considered view of your office. At the very least, I believe that Departments should release information about gifts to Ministers with a value of more than £125

Refusal to provide any of this information is likely to result in a high profile appeal to the Ombudsman which I believe we will lose, with attendant bad publicity.

Rob Evans has made requests for information under four headings:

- i. how many gifts have Ministers reported to their Permanent Secretary under the terms of the Ministerial Code since January 1998; the nature, value and donor of the gift; and with copies of the documents reporting the gift;
- ii. a list of meetings held between Ministers and outside interest groups since July 2001, the names of those present and the purposes of each meeting. Again, this is information required to be held under the terms of paragraph 63 of the Ministerial Code;
- iii. how many meetings Ministers have had with representatives of (a) Esso/ExxonMobil and (b) Powderject since January 1999, when and where the meetings took place and who attended. He also asks for information on how many times Ministers have written to these companies, the dates and signatories of the letters, and the number and dates of "representations" on behalf of these two companies made by Ministers to other parties. Again, the information on meetings is required to be kept under the terms of the Ministerial Code and

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Departments routinely keep copies of all Ministerial correspondence. It would be more difficult to define exactly what constituted a representation to an other party and therefore whether any records were kept.

- iv. To reconsider the earlier refusal by Departments to reveal information about consultation by Ministers with their Permanent Secretaries about financial interests or conflicts of interest.

I see no argument for changing the stance on item (iv) – The refusal was based on two exemptions in the Code – on the disclosure of internal discussion and advice, and the protection of personal privacy. Indeed the justification for refusal is reinforced by the changes made in July 2001 to the Ministerial Code which set up the new system of requiring Ministers, on appointment, to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict of interest although these lists will not normally be made public. This issue has of course already been the subject of a critical Ombudsman's report and the Government is unlikely to want to change its stance in response to this request.

Of the other requests, that on gifts seems most anodyne. Although it may of course be that individual gifts look embarrassing because of their nature or donor, it is not clear what actual harm disclosure would cause that outweighs the public interest in disclosure. That is the test that LCD officials advise formally needs to be applied to any decision. On gifts, there is a readacross between the Ministerial Code and the Register of Members' Interests with an acknowledgement in the Code that gifts worth more than £125 should be declared in the Members' Register. I therefore believe that the scale of disclosure could be limited by sticking to the £125 threshold already applied in the Members' Register of Interests (and therefore where many of these gifts already appear). The level of £125 is the threshold for the period 2 May 1997 to 14 May 2002. Since 15 May 2002, the limit has been increased to £550. However, I would recommend that we use the old figure on the basis that it covers the majority of the period in question.

The request for information about meetings and representations, and in particular that relating to Powderject and Esso/ExxonMobil is clearly the most sensitive. As you know, Government policy is that information about meetings between Ministers and others should not be disclosed, on the grounds that some of these meetings are held on a confidential basis. The only case that I am aware of where an exception has been made to this policy is in the case of meetings between DTI Ministers and Enron where it was made clear at the time of disclosure that it remains the Government's policy not to provide details of Ministerial meetings but that because of unsubstantiated and unjustified allegations against the Government it was thought right to make clear, without setting a precedent, where there had been meetings between the DTI and

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Enron as that was the lead department dealing with energy policy.

In the case of some Ministerial meetings, there may be an issue of commercial confidentiality [and this is a valid exemption under the Code]. If Departments think this applies in the case of any Ministerial meetings and in particular to meetings with Powderject and Esso, then they would have clear grounds for refusal to disclose on that basis alone. In all other cases, we have to rest on the more tenuous exemptions in the Code relating to Internal Discussion and Advice and the Effective Management of the Public Service. In refusing to give any information about meetings, whether with Powderject/Esso or others, it is not clear that the overriding harm test would be met.

While a refusal to reveal any information about meetings is consistent with existing policy, it is undoubtedly the case that it will be interpreted as a cover-up. The same is almost certainly true about non-disclosure of correspondence with Powderject or Esso/Exxon and "representations" made on their behalf. While none of this may justify reversal of the previous policy on disclosure of information about meetings, and accepting that it is almost certainly the case that Mr Evans will anyway make a formal complaint to the Ombudsman the Government would undoubtedly put itself in a better position if it were to agree to at least one of Mr Evans' requests for disclosure. The release of limited information about gifts seems the least damaging candidate.

When you have reached a view, it will be for the LCD formally to circulate advice to all Departments. You may wish therefore to talk to Derry Irvine about the issues and presentation.

Gray Sue - Machinery of Government Secretariat -

From: Hughes Lee [Lee.Hughes@homeoffice.gsi.gov.uk]
Sent: 14 June 2002 16:35
To: 'Gray Sue - Central Secretariat -'
Subject: RE: Rob Evans

Sue

Thanks - no problems with this.

Lee

-----Original Message-----

From: Gray Sue - Central Secretariat -
[mailto:Sue.Gray@cabinet-office.x.gsi.gov.uk]
Sent: 14 June 2002 16:23
To: 'Lee.Hughes@homeoffice.gsi.gov.uk'
Subject: Rob Evans

Grateful for comments
<<EVANS_.doc>>

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Ghosh Helen - Machinery of Government Secretariat -

From: Ghosh Helen - Central Secretariat -
Sent: 11 June 2002 15:05
To: Sumner Clare
Cc: Gray Sue - Central Secretariat -
Subject: RE: ROB EVANS ETC - FOI REQUESTS

To be honest, I'm deliberately dragging my feet a bit on this one. Richard still thinks it's worth his putting formal advice to the PM on the issue, despite Jonathan's very firm steer, but I'm (given the general state of things) reluctant that he should do this when we know what the answer will be. So I agreed with Lee that I'd check with him on Thursday (when I get back from a Beacon visit to a Lincolnshire prison....) to see whether Hayden/the Lord Chancellor had reached any view. If the LC also took Jonathan's view, then that reinforces the line that there's not much point in raising the issue with the PM. But I'm happy to be guided by you! And I suppose there might anyway be a need to put advice formally on the record. H

-----Original Message-----

From: Clare Sumner [mailto:CSumner@no10.x.gsi.gov.uk]
Sent: 11 June 2002 12:15
To: 'Ghosh Helen - Central Secretariat -'
Subject: RE: ROB EVANS ETC - FOI REQUESTS

Thanks - I will also talk to Lee

are you doing any wider advice or is that it?

-----Original Message-----

From: Ghosh Helen - Central Secretariat -
[mailto:helen.ghosh@cabinet-office.x.gsi.gov.uk]
Sent: 10 June 2002 10:23
To: Sumner Clare
Subject: RE: ROB EVANS ETC - FOI REQUESTS

Clare - to bring you (briefly) up to date. Jonathan had a word with Richard Wilson about all this, ten days ago, and was firmly against any disclosure under any of the three headings (even of the stuff on gifts). I've fed this back to LCD (but Lee Hughes has been away until today). I think that they're going to report back to the Lord Chancellor to check his view, before we finalise advice to all Depts. Helen

-----Original Message-----

From: Clare Sumner [mailto:CSumner@no10.x.gsi.gov.uk]
Sent: 10 June 2002 10:12
To: 'Ghosh Helen - Central Secretariat -'; Clare Sumner
Cc: Jonathan Powell; Gray Sue - Central Secretariat -
Subject: RE: ROB EVANS ETC - FOI REQUESTS

I have been away - I am happy to discuss - I am not sure you have quite got all the facts about what we have been saying from here.

-----Original Message-----

From: Ghosh Helen - Central Secretariat -
[mailto:helen.ghosh@cabinet-office.x.gsi.gov.uk]
Sent: 28 May 2002 13:17
To: Sumner Clare - No. 10 -
Cc: Powell Jonathan - No. 10 -; Gray Sue - Central Secretariat -
Subject: ROB EVANS ETC - FOI REQUESTS

Clare - Richard Wilson has asked me to take a personal look at the latest version of the draft LCD guidance to Departments in response to Rob Evans' (and Guardian colleagues') round robin requests for information under the FOI code about (a) gifts; (b) meetings/correspondence with Exxon and Powderjett; and (c) Ministerial discussion with Perm Secs on personal interests/Robathan.

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game (a blanket refusal to give any information whatever) is worth the candle?

If we refuse, there is bound to be an application to the Ombudsman, and the Ombudsman (as long as Michael Buckley is in post, certainly till end July, and possibly to September) will pursue it with enthusiasm. PASC has recently summoned John Gieve to defend the Robathan line, as well as the confusion over Wally Hammond papers. While there is a colourable line on Robathan (personal privacy) it is not clear what objective defence there is on refusal to reveal straightforward facts about meetings and letters, details of which Depts are anyway required to keep under the Ministerial Code. As you know, LCD do not believe that we can simply claim exemptions under the heading of "internal discussion or advice" or "effective management and operation of the public service" unless we can show that some active harm is done by disclosure. And refusal to give information is bound to fuel public concern about the whole political donation issue.

Given the credit that the Prime Minister has got from agreeing to appear before the Liaison Committee, I am concerned that his credit (and indeed of the Government's whole commitment to openness) will be significantly damaged by what seems to be a defensive cover-up. Hence this note, before I put final advice to Richard!

Happy of course to discuss. Helen

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Ghosh Helen - Machinery of Government Secretariat -

From: Ghosh Helen - Central Secretariat -
Sent: 10 June 2002 10:42
To: Candler Paul - Cabinet Secretary's Office -
Subject: RE: ROB EVANS REQUESTS

No - Lee Hughes isn't back from leave until today, and I guess that he'll put something to the LC. H

-----Original Message-----

From: Candler Paul - Cabinet Secretary's Office -
Sent: 10 June 2002 10:29
To: Ghosh Helen - Central Secretariat -
Cc: Pugh Sally - Central Secretariat -
Subject: RE: ROB EVANS REQUESTS

Helen

Any news on this?

Paul

-----Original Message-----

From: Ghosh Helen - Central Secretariat -
Sent: 31 May 2002 13:11
To: Candler Paul - Cabinet Secretary's Office -
Cc: Pugh Sally - Central Secretariat -
Subject: FW: ROB EVANS REQUESTS

Paul - I agreed with Andrew E that the next step was for him to consult the Lord Chancellor. He felt he needed a formal statement of our position , for the audit trail. H

-----Original Message-----

From: Ghosh Helen - Central Secretariat -
Sent: 31 May 2002 13:09
To: 'andrew.ecclestone@homeoffice.gsi.gov.uk'
Cc: Pugh Sally - Central Secretariat -
Subject: ROB EVANS REQUESTS

Andrew - following up our earlier conversation, I am just writing to confirm that the Cabinet Office view is that Departments should be advised to refuse all of Mr Evans' requests for information about gifts, and meetings and correspondence with Exxon and Powedject, as well as his request to review their decisions on information about Ministerial consultation of Permanent secretaries, on the grounds that you have previously discussed with Sally Pugh. You will be considering how to take this matter forward. Helen

Pugh Sally - Machinery of Government Secretariat -

From: Ecclestone Andrew [Andrew.Ecclestone@homeoffice.gsi.gov.uk]
Sent: 31 May 2002 13:45
To: 'Ghosh Helen - Central Secretariat -'; Ecclestone Andrew
Cc: Pugh Sally - Central Secretariat -; Hey Nancy; Hughes Lee
Subject: RE: ROB EVANS REQUESTS

Helen,

Thank you for this. I will be discussing this with Lee Hughes on his return from leave on 10 June.

Andrew

-----Original Message-----

From: Ghosh Helen - Central Secretariat -
[mailto:helen.ghosh@cabinet-office.x.gsi.gov.uk]
Sent: 31 May 2002 13:09
To: 'andrew.ecclestone@homeoffice.gsi.gov.uk'
Cc: Pugh Sally - Central Secretariat -
Subject: ROB EVANS REQUESTS

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This email message has been swept for computer viruses.

Gray Sue - Machinery of Government Secretariat -

From: Ghosh Helen - Central Secretariat -
Sent: 31 May 2002 08:35
To: Powell Jonathan - No. 10 -
Cc: Gray Sue - Central Secretariat -; Pugh Sally - Central Secretariat -
Subject: RE: ROB EVANS ETC - FOI REQUESTS

Fine - just thought I ought to make sure the issue was aired. We'll talk to LCD about how we can put the best face on it. Helen

-----Original Message-----

From: Jonathan Powell [mailto:JPowell@no10.x.gsi.gov.uk]
Sent: 30 May 2002 19:24
To: 'Ghosh Helen - Central Secretariat -'; Clare Sumner
Cc: Gray Sue - Central Secretariat -; Jeremy Heywood
Subject: RE: ROB EVANS ETC - FOI REQUESTS

Richard raised this with me this afternoon. I would have a problem even in publishing a list of gifts. Not because there is anything wrong - Debbie applies the rules scrupulously - but the media could have a lot of fun with a huge list of gifts from other governments which would embarrass us with those governments (especially if it becomes clear that very few of them are kept!).

The other two strike me as clearly out of bounds.

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Cc: Powell Jonathan - No. 10 -; Gray Sue - Central Secretariat -
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As you know, LCD have been pushing for maximum "openness" but they (and I) have no problem with the outcome of consultation with you on gifts (let's give details on all over £125) and Robathan (we all have to stick to the HO line and refuse). But I am very bothered about the line on meetings etc, and wanted to run it past you one more time. Are we really sure that this game (a blanket refusal to give any information whatever) is worth the candle?

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Given the credit that the Prime Minister has got from agreeing to appear before the Liaison Committee, I am concerned that his credit (and indeed of the Government's whole commitment to openness) will be significantly damaged by what seems to be a defensive cover-up. Hence this note, before I put final advice to Richard!

Happy of course to discuss. Helen

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Subject: FW: ROB EVANS REQUESTS

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Richard
The ball is now
in LCD's court

R
31/5.

Speak Helen

Glenn please

A.
B/S

Richard.

~~A. copy to Jonathan~~

~~Amsh. This reflects~~

~~discussion with him.~~

R.
4/6

Gray Sue - Machinery of Government Secretariat -

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Sent: 30 May 2002 19:24
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Gray Sue - Machinery of Government Secretariat -

From: Ghosh Helen - Central Secretariat -
Sent: 28 May 2002 13:19
To: Candler Paul - Cabinet Secretary's Office -
Cc: Gray Sue - Central Secretariat -; Pugh Sally - Central Secretariat -
Subject: FW: ROB EVANS ETC - FOI REQUESTS

For information - given that Sir Richard is up to his eyes at the moment, I thought I'd have one more try with No 10, before suggesting he formally raise the issue. H

-----Original Message-----

From: Ghosh Helen - Central Secretariat -
Sent: 28 May 2002 13:17
To: Sumner Clare - No. 10 -
Cc: Powell Jonathan - No. 10 -; Gray Sue - Central Secretariat -
Subject: ROB EVANS ETC - FOI REQUESTS

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Gray Sue - Machinery of Government Secretariat -

From: Candler Paul - Cabinet Secretary's Office -
Sent: 23 May 2002 09:41
To: Pugh Sally - Central Secretariat -
Cc: Gray Sue - Central Secretariat -; Ghosh Helen - Central Secretariat -
Subject: Code of Practice on Access to Government Information: Requests from Rob Evans
Importance: High

Sally, Sue

Sir Richard has asked me to say to you that he finds it unacceptable that he is still awaiting advice on this, particularly in the light of Sir Hayden Phillips's letter of 22 April.

He would be grateful for advice and a draft reply today please. In the absence of this, he will draft a reply himself.

Thanks

Paul

Paul Candler
PS/Sir Richard Wilson
Tel: 020 7270 0115
Fax: 020 7276 0208

Pugh Sally - Machinery of Government Secretariat -

From: Candler Paul - Cabinet Secretary's Office -
Sent: 22 May 2002 14:52
To: Pugh Sally - Central Secretariat -; Gray Sue - Central Secretariat -
Subject: Rob Evans

Really sorry to keep nagging about this, but can you tell me when you think we'll have something to send round? I've had another enquiry.

Thanks

Paul

Paul Candler
PS/Sir Richard Wilson
Tel: 020 7270 0115
Fax: 020 7276 0208

Pugh Sally - Machinery of Government Secretariat -

From: Candler Paul - Cabinet Secretary's Office -
Sent: 14 May 2002 09:37
To: Pugh Sally - Central Secretariat -
Cc: Gray Sue - Central Secretariat -
Subject: RE: Code of Practice on Access to Government Information: Request from Rob Evans

Sally

Grateful for an update on this please.

Paul

-----Original Message-----

From: Candler Paul - Cabinet Secretary's Office -
Sent: 07 May 2002 14:26
To: Pugh Sally - Central Secretariat -
Cc: Gray Sue - Central Secretariat -
Subject: Code of Practice on Access to Government Information: Request from Rob Evans

Hi Sally

Wonder where we are on this now? I think Sir Richard sent the holding reply to Wednesday morning colleagues last week, but I wonder when we might have a more substantive letter?

Thanks

Paul

Paul Candler
PS/Sir Richard Wilson
Tel: 020 7270 0115
Fax: 020 7276 0208

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PS/Sir Richard Wilson
Tel: 020 7270 0115
Fax: 020 7276 0208

Pugh Sally - Central Secretariat -

From: Ecclestone Andrew [Andrew.Ecclestone@homeoffice.gsi.gov.uk]
Sent: 02 May 2002 10:41
To: 'Sally.Pugh@cabinet-office.x.gsi.gov.uk'
Cc: Hughes Lee; Hey Nancy; Ecclestone Andrew
Subject: Draft Guidance to Departments on the Rob Evans Requests

Dear Sally,

I'm afraid Nancy is off work sick today. Lee Hughes has asked me to reply to your emails and draft guidance on these requests which you sent Nancy yesterday. Thank you for letting us have a look at this. We look forward to being able to circulate something to Departments shortly.

You asked for comments on the citation of exemptions in the Code and on whether the form of the draft letter provided adequate practical guidance to departments. My comments are set out below.

1. In relation to the Advice to Departments on Part A section 1 (Acceptance of Gifts), it is not clear why Departments should cite exemption 2 as the grounds for non-disclosure of the document in which the receipt of the gift is reported. The Ombudsman has made clear in the past that it is not acceptable simply to cite a particular exemption - departments must be able to show exactly what harm would result were the exemption not applied. Where a department has decided that harm would result from disclosure, the first two paragraphs of Part II of the Code should be carefully borne in mind. In all cases in which a department is minded to refuse information under an exemption which refers to harm or prejudice these paragraphs require them to consider the public interest in disclosing the information, and requires them to demonstrate that the harm which would result from disclosure outweighs the public interest in making the information available. Departments will need to be able to satisfy the Ombudsman that they have considered the factors relating to the public interest for and against disclosure and why the balance has come down one way or the other.

2. In relation to your suggestion for a de minimis threshold for the value of the gifts which should be included in the list supplied by departments to Mr. Evans, I am not clear why there should be any such threshold or limit. If the information is available it should be disclosed in response to the request. Since you have taken the decision in principle to release the information, the only conceivable exemption which could apply is if the volume of information is so great that you wish to advise departments to consider applying the part of Exemption 9 which permits the refusal of requests 'because the amount of information to be processed...would require unreasonable diversion of resources'. Before advising departments to rely on that exemption, you may wish to consider what signal that would send regarding the number of gifts ministers are receiving and the state of departmental record keeping of these matters.

3. It is also not apparent why the period for which you are proposing departments should supply some of the information should be limited to March 2002 or April 2001. Mr. Evans has asked for the information on gifts received 'since January 1998'. I feel the Ombudsman would expect departments to supply the information from January 1998 to the most recent information available prior to the letter from the department answering the request. I cannot see what grounds the Code presents for any other 'end date'.

4. In relation to requests B and C, I think you again need to consider how departments should demonstrate the harm which would result from disclosure of the information sought. In particular the guidance should be much more specific as to which limb of Exemptions 2 and 7 you are advising them to rely upon. I suggest you examine the Guidance on Interpretation of the Code for more details on what interests or functions each exemption is designed to protect. In any event, departments will again have to be advised as to how the public interest in the disclosure has been weighed - in regard to each part of Mr. Evans' request. The Ombudsman has previously severely criticised departments for blanket citations of exemptions without showing careful justification.

5. It is also not appropriate under the Code simply to say that 'it is not

the normal practice of Governments' to release this information. Under the Code, information can only be refused in accordance with the exemptions in Part II of the Code. In the same vein, consistency of approach is not a valid reason to refuse information unless those PQs too only withheld information in accordance with the Code exemptions (see principle iv of Part 1 of the Ministerial Code). The Ombudsman requires departments to make judgements on a case by case basis. In fact the draft advice to departments undermines the supposed case for 'consistency' as it already reveals that some of the information you are advising departments to withhold has in fact been released in response to a PQ. It is difficult therefore to see how arguments to withhold similar information to this will stand up to scrutiny by the Ombudsman.

6. In relation to request D, it is worth reiterating that departments must, in their internal review of the initial refusal to disclose, be able to demonstrate what public interest factors they have considered in relation to each limb of the request. Given that this advice is being given so as to be consistent with the Government's line in the Robathan case, and that was the first instance of the Government refusing to comply with the recommendation of the Ombudsman on a Code request, it is quite likely that if the Ombudsman is invited at a later date to investigate this suggested refusal to disclose, that he will be extremely rigorous in his examination of departments' handling of the internal review.

7. As to the form of the draft guidance, the structure is clear enough. When you have considered the points above regarding the content of the advice, I am sure departments would appreciate a form of words to use as a guide when replying to Mr Evans, and circulating a copy of the letter being sent by the Cabinet Office may be the easiest way to do this. Departments will of course still need to ensure their own replies are consistent with the information relating to their departments (eg who they have held meetings with, gifts received etc).

I am happy to discuss these or any other points with you if you're in need of clarification or other advice.

Yours,

Andrew Ecclestone
Policy Manager
Freedom of Information & Data Protection Division
Lord Chancellor's Department
Room 921
50 Queen Anne's Gate
London SW1H 9AT

Tel: 020 7273 3149
Fax: 020 7273 2684

-----Original Message-----

From: Pugh Sally - Central Secretariat -
[mailto:Sally.Pugh@cabinet-office.x.gsi.gov.uk]
Sent: 01 May 2002 13:55
To: 'Nancy.Hey@homeoffice.gsi.gov.uk'
Subject: FW: Draft Guidance to Departments on the Rob Evans requests

Nancy

Further to note below, the view here is that we should set the threshold level above which we release info on gifts at that which is in operation for the House of Commons register ie £125 (I need to check that this is still correct).

Ta

Sally

> -----Original Message-----

> From: Pugh Sally - Central Secretariat -
> Sent: 01 May 2002 13:30
> To: 'Nancy.Hey@homeoffice.gsi.gov.uk'
> Subject: Draft Guidance to Departments on the Rob Evans requests
>

>
> Nancy
>
> We spoke. As discussed, I should be grateful for your views on the draft
> letter from the perspective of whether it provides adequate practical
> guidance to departments for the construction of their replies,
> particularly where we are advising them not to release the info requested.
> Also, where we are not releasing, are you happy that I have cited the
> correct exemptions. Finally, in view of yesterday's article, what is your
> view on applying a de minimis limit on the gifts as suggested in the
> guidance. Is it also correct to take the period for release of info on
> gifts up to end of March 2002, or should it be restricted to the date of
> the request ie April 2001.
>
> Happy to discuss (after 2pm).
>
> Many thanks
>
> Sally
>
>
> <<Rob Evans Request.doc>>
>

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solely for the use of the individual or entity to whom they are addressed. I
f you have received this email in error please return it to the address
it came from telling them it is not for you and then delete it from your system.

This email message has been swept for computer viruses.

Paul Candler
PS/Sir Richard Wilson

From: Sally Pugh
Central Secretariat
Room 118 70W
276-2472

Date: May 2002

Copy: Sue Gray

**ROUND ROBIN REQUESTS FROM ROB EVANS AND TANIA BRANIGAN
UNDER THE CODE OF PRACTICE ON ACCESS TO GOVERNMENT
INFORMATION**

Issue

To note and approve the draft handling guidance at **Annex A** that departments should follow in responding to the above requests.

Timing

2 We have undertaken to let LCD have guidance for circulation to departments as soon as possible.

Background

3. The approach set out in the draft handling note has been cleared with Clare Sumner and reflects No10's view on how departments should deal with the requests. [It does not go as far as LCD's FOI Unit have advised, and officials there warn that partial disclosure of information requested on gifts, and non-disclosure of information requested on meetings is likely to lead to further representations to the Ombudsman].

4. On gifts, the guidance advises departments to release the factual information requested about gifts received since January 1998, but to include only those that are valued at £125 or more. This is the threshold that currently operates in the House of Commons for the registration of gifts received by Members. This approach will avoid the requirement for departments to list trivial and low-value items, and reinforces the link to the House arrangements. The guidance advises departments to refuse the provision of a copy of the document reporting the receipt of gifts to the Permanent Secretary, and to refuse release of information about advice sought from the Prime Minister in cases of difficulty or doubt on the grounds of internal guidance and advice.

5. On meetings with outside interest groups, contacts between Ministers and representatives of Esso, and contacts between Ministers and Powderject Ltd, the

guidance advises against release of the information requested. This is in line with the way departments have been advised to respond to similar requests for information in PQs etc, but is contrary to the approach suggested by LCD which recommends release of the information requested.

6. On the request for an internal review of an earlier request under the Code of Practice about Ministers consulting Permanent Secretaries about their private interests. The guidance advises departments to continue to refuse to release the information requested. The original request covered the same information as that requested in the Rowbathan case, and LCD accept that it is necessary for departments to hold the same line.

7. If the approach set out in the draft handling guidance is acceptable, I will arrange for a final version to be sent across to LCD for circulation to departmental contacts.

Sally Pugh
Central Secretariat

Draft Guidance Letter to Departments

REQUESTS FROM ROB EVANS AND TANIA BRANIGAN UNDER THE CODE OF PRACTICE ON ACCESS TO GOVERNMENT INFORMATION

Two Guardian journalists, Rob Evans and Tania Branigan, have between them made the following requests for information under the Code of Practice on Access to Government Information to some or all departments:

A. Acceptance of Gifts by Ministers and Advice from the Prime Minister in Cases of Difficulty or Doubt.

Request Details

Section 1 - In line with the guidance contained in Paragraph 127 (now Paragraph 137 of July 2001 version [copy attached]) of the *Ministerial Code*:

The number of times Ministers in the department have reported the receipt of gifts to the Permanent Secretary since 1 January 1998, and in each case:

- State who donated the gift;
- State which departmental Minister accepted the gift;
- State the nature of the gift;
- State whether the gift was valued at more or less than £140; and
- Provide a copy of the document that reported the receipt of gifts to the Permanent Secretary.

Section 2 - In line with the guidance contained in Paragraph 127 (now Paragraph 137 of July 2001 version) of the *Ministerial Code*:

The number of times Ministers in the department concerned have sought the advice of the Prime Minister in cases of doubt or difficulty about accepting gifts, hospitality or services since 1 January 1998, and in each case:

- For what reasons did Ministers seek the Prime Minister's advice; and
- How was the matter resolved.

Advice to Departments

On Section 1, Departments should provide factual information for all parts **except** the provision of a copy of the document that reported the receipt of the gift to the Permanent Secretary. Departments should cite Exemption 2 (Internal Discussion and

Advice) as the grounds for non-disclosure of the document [Further explanation for use of exemption required – which limb? harm?]. Departments should provide the factual information requested for the period 1 January 1998 to present day. All gifts should be included regardless of whether they were surrendered to the department or retained by the Minister concerned. Paragraph 137 of the *Ministerial Code* sets out the rules that should be followed when Ministers accept gifts. [To avoid inclusion of trivial and low-value items, Departments should restrict the release of information to gifts valued in excess of £125. This is the threshold currently in operation in the House of Commons for the registration of Members' interests. ?Need to give reasons for not releasing information on all gifts given that the information requested is available.]

On Section 2, Departments should refuse information for all parts on the grounds of Exemption 2 (Internal Discussion and Advice) [Further explanation for use of exemption required –which limb? harm?].

B. Meetings between Ministers and Outside Interest Groups

Request Details

In line with the guidance in Paragraph 63 of the *Ministerial Code*:

A list of meetings between Ministers and outside interest groups that have taken place since 20 July 2001, including for each meeting:

- Name of Minister attending;
- Name(s) of outside interest group(s) attending;
- The date it took place;
- Reason(s) for holding it.

Advice to Departments

See advice on **D** below.

Contacts between Ministers and Representatives of Esso (known as ExxonMobil in the United States)

Request Details

- How many meetings have take place between Ministers in the department and representatives of Esso/ExxonMobil since January 1 1999;
- When and where did each of these meetings take place;
- Which Ministers attended each of these meetings;
- How many times have representatives of Esso/ExxonMobil written to

Ministers in your department since January 1 1999;

- On what dates were each of these letters written; and to which Ministers were each of the letters addressed;
- How many times have Ministers in your department written to representatives of Esso/ExxonMobil since January 1 1999;
- On what dates were each of these letters written; and which Ministers wrote each of these letters;
- How many representations have been made since January 1 1999 by Ministers on behalf of Esso/ExxonMobil to other parties;
- On what dates were each of these representations made; and to whom were each of these representations made.

D. Contacts between Ministers and Representatives of Powderject Ltd

Request Details

- How many meetings have taken place between Ministers in your department and representatives of Powderject since January 1 2000;
- When and where did each of these meetings take place;
- Which Ministers attended each of these meetings;
- How many times representatives of Powderject have written to Ministers in the department since January 1 2000;
- On what dates were each of these letters written; and to which Ministers were each of the letters addressed;
- How many times Ministers in the department have written to representatives of Powderject since January 1 2000;
- On what dates were each of these letters written; and which Ministers wrote each of these letters;
- How many representations have been made since January 1 2000 by Ministers on behalf of Powderject to other parties;
- On what dates were each of these representations made; and to whom were each of these representations made.

Advice to Departments

Departments should adopt the same approach on requests **B**, **C** and **D**, and should

refuse information for all parts, citing Exemption 2 (Internal Discussion and Advice), and Exemption 7 (Effective Management and Operations of the Public Service). [Further justification on use of these exemptions required – which limbs? harm test?].

Background

Departments will be aware that there have been numerous Parliamentary Questions (PQs) recently asking for similar information to that requested at C, and should ensure consistency with the approach adopted in answering these PQs. For example, DTI Ministers have provided more specific information in response to PQs about meetings with representatives from the oil companies, and may need to modify their replies accordingly, explaining any exceptional departure from normal practice.

E. Request for an Internal Review of an Earlier Decision to Refuse Information Under the Code of Practice.

Review Request Details

Departments are requested to review their earlier decision not to release information in response to a Code of Practice request that asked:

- How many times Ministers in the department have consulted the Permanent Secretary in relation to paragraph 123 of the *Ministerial Code* (July 1997 version) on financial interests and conflicts of interest since January 1 1999;
- On what dates Ministers in the department consulted the Permanent Secretary as above;
- Which Ministers in the department have consulted the Permanent Secretary as above;
- For what reasons each Minister consulted the Permanent Secretary as above;
- What action was taken in each case since January 1 1999, and in which was it necessary to consult the Prime Minister;
- A copy of the minute from the Minister to the Permanent Secretary recording the necessary action, and nature of any action taken to avoid actual or perceived conflict of interest.

Advice to Departments

Departments should state that they have reviewed their response to the original request, and for the reasons set out in the original reply, Exemption 2 (Internal Discussion and Advice) and Exemption 12 (Privacy of an Individual) continue to apply. [Further justification on use of exemptions required – limbs? harm test? Evidence that thorough review has been undertaken?].

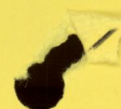
Background

Departments should also highlight in their replies that under the terms of the July 2001 version of the *Ministerial Code*, the rules in this area have been strengthened. All Ministers are now required, on appointment to each new office, to provide their Permanent Secretary with a list of their financial and other interests which could give rise to a conflict of interest. Ministers then have to have a meeting with the Permanent Secretary to discuss the list and consider what action, if any, is necessary.

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