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BRIEFING PAPER

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Collective responsibility

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Summary

Collective responsibility is a fundamental convention of the British constitution, whereby the Government is collectively accountable to Parliament for its actions, decisions and policies.

Decisions made by the Cabinet are binding on all members of the Government. This means that if a minister disagrees with a government policy, he or she must still publicly support it. A minister who cannot abide by collective responsibility is expected to resign.

The convention has its origins in the eighteenth century. During that period, ministers would agree beforehand the individual advice they would give to the monarch, in order to protect them against his attempts to 'divide and rule' by exposing or encouraging disagreement between them. During the nineteenth and twentieth century, this idea endured to ensure ministerial unanimity in Parliament.

In the United Kingdom, all members of the Government are bound by the doctrine of collective responsibility, except "where it is explicitly set aside".

The formal suspension of collective responsibility on a particular issue is rare. In recent years, however, there have been several departures from the convention, partly owing to the complexities of coalition government.

A formal suspension of collective responsibility is usually known as an 'agreement to differ'. Examples of this have included:

- On tariff policy in 1932.
- On the 1975 referendum on the UK's membership of the European Economic Community.
- On direct elections to the European Assembly in 1977.
- On various issues under the 2010–15 Coalition Government, including the 2011 referendum on the alternative voting system for general elections, as agreed in the 2010 Coalition Agreement.
- On the 2016 referendum on the UK's membership of the European Union.

In October 2016 a "special arrangement" was also put in place to allow certain ministers "some flexibility" to depart from the normal arrangements surrounding collective responsibility, in response to the Government's decision on Heathrow expansion.

The fact that collective responsibility can be set aside has led some academics to argue that it is as much a rule of political expediency – enforced by Prime Ministers when it suits them and discarded when it does not – as it is a convention of the constitution.

This briefing paper focuses primarily on the doctrine of collective responsibility in relation to the United Kingdom's Government. However, the doctrine of collective responsibility has also been accepted and applied by the Scottish and Welsh devolved administrations. Collective responsibility is not a feature of the Northern Ireland Executive.

1. What is collective responsibility?

Collective responsibility is a fundamental convention of the British constitution, whereby the Government is collectively accountable to Parliament for its actions, decisions and policies.

Decisions made by the Cabinet are binding on all members of the Government. This means that if a minister disagrees with a government policy, he or she must still publicly support it. A minister is able to express their views and disagree privately, but once a decision has been made by the Cabinet, it is binding on all members of the Government. A minister who cannot abide by collective responsibility is expected to resign.[1]

The Cabinet Office's *Ministerial Code* (2015) sets out how collective responsibility should work in practice:

> 2.1 The principle of 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, including in correspondence, should be maintained.[2]

The *Cabinet Manual* (2011) also states that ministers are bound by the collective decision of the Cabinet. In practice, this means that a decision of the Cabinet, or one of its committees, "is binding on all members of the Government, regardless of whether they were present when the decision was taken or their personal views".[3]

Box 1: What is the Cabinet?

The Cabinet is the ultimate decision-making body of the executive within the UK Government. It is comprised of the Prime Minister and the twenty or so senior ministers in the Government.

Every Tuesday, while Parliament is in session, the Cabinet meets in the Cabinet room at 10 Downing Street to discuss the issues of the day. The meeting is chaired by the Prime Minister, who decides who speaks around the Cabinet table, and sums up at the end of each item. It is this summing up that then becomes government policy.

In addition to meetings of the whole Cabinet, a range of Cabinet Committees meet in smaller groups to consider policy with other ministers who are closely involved with the relevant issue. Much of the work of Cabinet is delegated to Cabinet Committees, which help to ensure government business is processed more effectively by relieving pressure on the Cabinet. Decisions taken by Cabinet Committees have the same authority as those taken by Cabinet.[4]

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1 Cabinet Office, *The Cabinet Manual: a guide to the laws, conventions and rules on the operation of government*, 2011, para 13
2 Cabinet Office, *Ministerial Code*, October 2015, para 2.1
3 Cabinet Office, *The Cabinet Manual: a guide to the laws, conventions and rules on the operation of government*, 2011, para 4.3
4 *Cabinet Manual*, para 4.7

1.1 At what point does collective responsibility apply?

Collective responsibility applies once a decision has been taken by the Cabinet. It is for the Prime Minister, as chair of the Cabinet, or the chair of the Cabinet Committee, to summarise what the collective decision is. This is then formally recorded in the Cabinet Minutes.

Prior to this, ministers are free to debate policy or decisions in private, and to disagree, but once a decision has been taken, they must publicly support it. The *Cabinet Manual* (2011) states that ministers "may resign when they are not able to continue to accept collective responsibility".[5]

1.2 Does collective responsibility always apply?

Collective responsibility is a fundamental convention, rather than a requirement, of the British constitution. The *Cabinet Manual* makes it clear that it applies, "save where it is explicitly set aside".[6]

When questioned about collective responsibility in 1977, Prime Minister James Callaghan famously said "I certainly think that the doctrine should apply, except in cases where I announce that it does not" (see section 3.3).[7]

The fact that collective responsibility can be set aside has led some academics to argue that it is:

> as much a maxim of political prudence as it is a convention of the constitution. It is generally sensible for the government to observe it…On other occasions, however, it maybe the lesser evil to suspend it.[8]

A departure from collective responsibility does not happen often (examples of when it has are set out in section 3). In recent years, however, there have been more frequent instances of the principle being departed from, largely due to the complexities of coalition government.

The formal suspension of collective responsibility is known as an 'agreement to differ' (see section 3).

1.3 The distinction between collective and individual ministerial responsibility

Government accountability in the UK operates through the conventions of both collective and individual ministerial responsibility. Individual ministerial responsibility refers to the convention that a minister is responsible to Parliament for the actions of their department. Collective responsibility requires each minister to support each Government decision.

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5 *Cabinet Manual*, para 3.20
6 *Cabinet Manual*, para 4.2
7 HC Deb 16 June 1977 vol 933 c552
8 V Bogdanor, *The New British Constitution*, 2009, p136

As Professor Diana Woodhouse observed in her book, *Ministers and Parliament* (1994), collective responsibility "provides Parliament with the means of holding the government as a body accountable". Individual ministerial responsibility "enables the House to focus on a particular minister and his responsibilities without the need to censure the whole government".[9]

1.4 Collective responsibility and the devolved administrations

This briefing paper focuses primarily on the principle of collective responsibility in relation to the United Kingdom's Government. However, collective responsibility has also been accepted and applied by several devolved administrations. Both the Scottish Government and the Welsh Assembly Government have adopted Westminster-style Cabinet systems bound together by collective responsibility.[10]

The *Scottish Ministerial Code* states that the Scottish Government "operates on the basis of collective responsibility".[11] So, too, does the National Assembly for Wales's *Ministerial Code*.[12] Both documents use wording on collective responsibility similar to that contained in the UK Government's *Ministerial Code*.

Collective responsibility is not a feature of the Northern Ireland Executive. Derek Birrell, Professor of Politics at Ulster University, explains in *Comparing Devolved Governments* (2012) that, with four main parties in the Executive after the 1998 Good Friday Agreement, there was no legal requirement or guidance laid down that decision-making would proceed on a formal basis of collective responsibility.[13] Instead, the Northern Ireland Executive's *Ministerial Code* states that decisions of the Executive Committee should be "reached by consensus wherever possible".[14] This is not collective responsibility.

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9 D Woodhouse, *Ministers and Parliament: Accountability in Theory and Practice*, 1994, pp3-4
10 P Lynch, 'Governing Devolution: Understanding the Office of First Minister in Scotland and Wales', *Parliamentary Affairs*, 2005, Vol. 59 No. 2, p1
11 Scottish Government, *Scottish Ministerial Code*, 2016 Edition, para 2.1
12 National Assembly for Wales, *Ministerial Code*, June 2016, paras 2.21 and 2.22
13 D Birrell, *Comparing Devolved Governments*, 2012, p55
14 Northern Ireland Executive, *Ministerial Code*, para 2.12

2. Conventions of collective responsibility

Summary

Collective responsibility is a constitutional convention, rather than a constitutional requirement. Academic commentators have identified three implications of the convention: confidence, unanimity and confidentiality.

Ministers who cannot abide by collective responsibility are expected to, and generally will, resign. Academic commentators have pointed out, however, that there is no automatic penalty for a breach or near breach of the convention. Much depends on the political strength of the Minister concerned.

2.1 A convention rather than a constitutional requirement

Collective responsibility is one of the most important non-legal rules within the UK's constitution. However, it is a constitutional *convention*. In the Republic of Ireland, by contrast, collective responsibility is a constitutional *requirement*, meaning that voting against a government there is not an option for a Cabinet Minister.[15]

In the UK, collective responsibility is therefore flexible. Mick Sumpter, Senior Lecturer in Law at Northampton University, argues that collective responsibility is:

> a rule of political expediency, to be enforced by Prime Ministers when it suits them and discarded when it doesn't. The question as to whether this is a strength (flexibility) or a weakness (self-serving) is worthy of a separate debate itself.[16]

Despite its flexible nature, academic commentators have summarised the implications of collective responsibility as delivering: confidence, unanimity and confidentiality. [17]

- **Confidence**: a government can only remain in office for as long as it retains the confidence of the House of Commons, a confidence which can be assumed unless and until proven otherwise by a confidence vote. A government's failure to command a majority on one issue need not mean that it cannot do so in other areas of policy. However, defeat in an explicit no-confidence motion implies that the Commons considers the government wholly incompetent.
- **Unanimity**: perhaps the most important practical aspect is that all members of the government speak and vote together in

15 R Hazell and B Yong, *The Politics of Coalition: How the Conservative-Liberal Democrat Government Works*, 2012, p18

16 Mick Sumpter, 'Yesterday once more?', Law at the University of Northampton, 24 March 2016

17 G Marshall, *Ministerial Responsibility*, 1989, pp2-4; I Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction*, Seventh Edition, 2015, pp269-274

Parliament, save in situations where the Prime Minister and Cabinet themselves make an exception such as a free vote or an 'agreement to differ' (see section 3). The rule applies even if the minister in question was not involved in actually making the decision (for instance, if it was made in a Cabinet committee of which he/she was not a member).

- **confidentiality**: this recognises that unanimity, as a universally applicable situation, is a constitutional fiction, but one which must be maintained, and is said to allow frank ministerial discussion within Cabinet and Government.

2.2 What does the convention mean in practice?

A minister must not vote against government policy: this is perhaps the most fundamental point of the convention as, ultimately, voting strength in the House of Commons is not only the measure of confidence in a government, but is the test of its very right to exist.

A vote is a clear public expression of a minister's support for the government (whatever that minister's personal opinion, expressed or otherwise). An unauthorised, dissenting vote would be expected to lead to immediate dismissal if there were no voluntary resignation. In general, an unauthorised abstention should lead to the same consequences, as collective responsibility requires not just the absence of dissent but the expression of positive support.

A minister must not speak against government policy: A speech or other form of expression may not always be as clear cut as a vote in terms of dissent. Ministers can always find ways, if they wish, of outwardly expressing 'loyal support' while sending out contrary signals. One example of this is the 'unattributable leak', which Professor Rodney Brazier, Professor of Constitutional Law at the University of Manchester, has described as 'the life saver' of the convention.[18] "From time to time", Brazier has argued, "Ministers will want their views publicly known so as to distance themselves from any Cabinet decision with which they do not agree".[19]

The issue of leaks and collective responsibility is discussed further in the House of Commons Library Research Paper on *Collective Responsibility of Ministers* (2004).

All decisions are decisions of the whole government: this does not mean that the identity of the relevant departmental minister is not disclosed. The *Ministerial Code* states that while decisions reached by Cabinet or Cabinet Committees are binding on all members of the Government, they are normally announced and explained as the decision of the minister concerned.[20]

A former minister must not reveal Cabinet secrets: this extended example of confidentiality clearly has less force than revelations when a

18 R Brazier, *Constitutional Practice*, 3rd edn, 1999, p145
19 Ibid., p 124-6
20 Cabinet Office, *Ministerial Code*, October 2015, para 2.3

minister is still in office. As the legal challenge to the publication of the Crossman diaries in the mid-1970s illustrated, the time factor is crucial to the enforcement of the doctrine (see Box 2).

However, ministers who resign can if they wish make a public statement in Parliament, and publish a resignation letter, (or, as with Michael Heseltine in 1986 over Westland, hold a press conference) explaining the reason for their action.

Box 2: The Crossman Diaries – Is Cabinet secrecy enforced by law?

Collective responsibility has been taken to mean that the obligation of confidentiality should subsist even once a minister leaves office. This has been challenged by the flood of memoirs, diaries, authorised biographies and media contributions from politicians, from former Prime Ministers downwards. The most famous episode in modern times is the publication of Richard Crossman's diaries.

Crossman was a Cabinet minister in Harold Wilson's Government in the 1960s and had continued to keep a full and detailed diary begun in Opposition. He died before it could be published, but extracts were later published in *The Sunday Times*. The Attorney General of the time sought injunctions to prevent further publication.[21]

The case, in 1975, turned on whether Cabinet secrecy was enforceable by law. Crossman's publishers argued that the duty of Cabinet confidentiality had no legal basis; it was merely a moral obligation, respected or ignored according to the minister's conscience. The Lord Chief Justice, Lord Widgery, examined the Attorney-General's argument for confidentiality in the public interest, believing that this could have application in national security cases or where 'in the short run (for example, over a period of weeks or months) the public interest is equally compelling to maintain joint Cabinet responsibility...'.[22]

The Lord Chief Justice then considered the nature of collective responsibility:

> *I find overwhelming evidence that the doctrine of joint responsibility is generally understood and practised and equally strong evidence that it is on occasion ignored.*

On the question of Cabinet confidentiality, the Lord Chief Justice said:

> *The Cabinet is at the very centre of national affairs, and must be in possession at all times of information which is secret or confidential. Secrets relating to national security may require to be preserved indefinitely. Secrets relating to new taxation proposals may be of the highest importance until Budget day, but public knowledge thereafter. To leak a Cabinet decision a day or so before it is officially announced is an accepted exercise in public relations, but to identify the Ministers who voted one way or another is objectionable because it undermines the doctrine of joint responsibility*.

Conclusion

The Lord Chief Justice concluded that there had to be a time limit on the obligation of confidentiality for the enforcement of the convention. Ten years, as in Crossman's case regarding the first volume of his diaries, was too long. The case therefore accepted the principle of a legal obligation of Cabinet secrecy but that application would depend on the time period involved between Cabinet meeting/decision and its disclosure.

Impact

At first sight, the Crossman case appears to be one where the courts have given legal value to a constitutional convention. The Lord Chief Justice accepted that ministers owed each other a legally enforceable duty of confidentiality. However, this duty did not derive from the convention turning into law. Instead, the court relied on existing common law to fulfil the ultimate aim of the convention, "by 'stretching' common law principles about confidentiality in respect of other types of relationships, particularly marriage and commercial undertakings".[23]

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21 H Young, *The Crossman Affair* (1976)
22 *Attorney-General v Jonathan Cape*, [1976] 1 QB 752, p768
23 Loveland, *Constitutional Law*, p274

2.3 Enforcing collective responsibility

Ministers who cannot abide by a decision of the Cabinet are expected to, and do, resign (see Box 3).[24] However, Rodney Brazier has suggested that near or actual breaches of collective responsibility provoke no automatic penalty:

> …much will depend on the particular minister's political strength, his ability to brazen out any demands for his resignation, and the attitude of the Prime Minister.[25]

Dr Felicity Matthews, Senior Lecturer in Governance and Public Policy at the University of Sheffield, has also argued that the respect accorded to the doctrine of collective responsibility "has varied", with its maintenance and disregard "owing as much to politics as to propriety".[26]

An interesting example of this occurred in 2003 during the build up to the Iraq war. Robin Cook, the Leader of the House of Commons, resigned in protest in March 2003 over the then Labour Government's policy toward Iraq, being unable to maintain the official Government position. His actions were therefore consistent with the doctrine of collective responsibility. However, Clare Short, the Secretary of State for International Development, was allowed to stay in the Cabinet despite her own vocal opposition to military intervention and despite publicly denouncing the then Prime Minister as "deeply reckless" in March 2003.[27]

According to Felicity Matthews, despite her "extraordinary breach" of collective responsibility, Clare Short was persuaded and allowed to retain her ministerial portfolio. She then remained in the Cabinet for a further two months, until she decided to resign on 12 May 2003, following perceived mistakes in the US/UK coalition after the invasion.[28] This example, according to Matthews, "underlines the extent to which Prime Ministers have proven unwilling or unable to enforce a strict interpretation of collective responsibility, even when their personal credibility has been besmirched".[29]

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24 *Cabinet Manual*, para 13
25 D Pollard, N Parpworth & D Hughes, *Constitutional and Administrative Law: Text with Materials*, 2007, p.169
26 F Matthews, 'The Coalitionising of Collective Responsibility', a paper prepared for the Annual PSA Conference, 14 April 2014, p5
27 Ibid., p4
28 Ibid., p4; D Pollard, N Parpworth & D Hughes, *Constitutional and Administrative Law: Text with Materials*, 2007, p.169
29 Matthews, 'Coalitionising of Collective Responsibility', p4

Box 3: Examples of ministerial resignations over disagreements with collective decisions

- In August 2014 Baroness Warsi, a minister in the Foreign Office, resigned from the Coalition Government because she could no longer support the Government's policy on the Israel-Gaza conflict. In her resignation letter to the Prime Minister, she said the Government's "approach and language during the current crisis in Gaza is morally indefensible, is not in Britain's national interest and will have a long term detrimental impact on our reputation internationally and domestically".[30]
- Robin Cook, a former Foreign Secretary, resigned as Leader of the House of Commons in March 2003 in protest over the Government's policy on Iraq.[31]
- Sir Geoffrey Howe resigned as Deputy Prime Minister in November 1990 over government policy on the European single currency and the general approach to the European Union.[32]

2.4 Constitutional significance of collective responsibility

Some commentators have questioned whether the convention of collective responsibility remains appropriate for government today.

Barry Winetrobe, research fellow at the Constitution Unit, has pointed out that a doctrine which first emerged in the eighteenth century to create and maintain a sense of coherence among disparate ministerial forces in the face of the Monarch "is not necessarily appropriate in an age, not just of democracy, but of greater and more direct participative democracy".[33]

However, the House of Lords Constitution Committee's 2014 report on the *Constitutional Implications of Coalition Government* argued that collective responsibility is constitutionally important for two reasons.

- The process of collective decision-making within government makes it more likely that better decisions are reached. "The need to consult and compromise means that policy can be more nuanced or better crafted".[34]
- It enables Parliament to hold the government as a whole responsible for its policies, decisions and actions. "Ministers cannot absolve themselves of responsibility for a policy by claiming other ministers decided it".[35]

The Lords' Committee report also highlighted what it labelled further "ancillary benefits" of collective responsibility. These included:

- That the Government speaks with one voice (at least in theory), thus preventing accusations of being divided;
- That the Government is required to act as a team;

30 'In full: Warsi's resignation letter and PM's response', BBC News, 5 August 2014
31 HC Deb 17 March 2003 vol 401 cc 726-728
32 A Le Sueur, M Sunkin, J Eric Khusal Murkens, *Public Law: Text, Cases, and Materials*, Third Edition, 2016, p298
33 B Winetrobe, 'Collective responsibility in devolved Scotland', *Public Law*, Spring 2003, p24
34 House of Lords Constitutional Committee, *Constitutional implications of Coalition Government*, 12 February 2014, para 66
35 Ibid., para 66

- Once a decision has been made, those in the civil service can go about implementing it secure in the knowledge that the decision will not be reversed unless there is a collective decision to do so;
- The Monarch can act on ministerial advice knowing that the advice represents the collective view of the Government.

The Committee concluded that collective responsibility has "served our constitution well".

> It promotes collective decision-making and ensures Parliament is able to hold the Government effectively to account for its actions, policies and decisions. It should continue to apply when there is a coalition government.[36]

[36] Ibid., para 77

3. Agreements to differ and departures from collective responsibility

Summary

All members of the Government are bound by the doctrine of collective responsibility, except "where it is explicitly set aside".

The formal suspension of collective responsibility on a particular issue does not happen often, and is usually referred to as an 'agreement to differ'. Previous examples of agreements to differ include:

- On tariff policy in 1932.
- On the 1975 referendum on the UK's membership of the European Economic Community.
- On direct elections to the European Assembly in 1977.
- On various issues under the 2010–15 Coalition Government, including the 2011 referendum on the alternative voting system for general elections, as agreed in the 2010 Coalition Agreement.
- On the 2016 referendum on the UK's membership of the European Union.

In October 2016 a "special arrangement" was put in place to allow certain Ministers "some flexibility" to depart from the normal arrangements surrounding collective responsibility, in response to the Government's decision on Heathrow expansion.

3.1 Departures from collective responsibility

All members of the Government are bound by the doctrine of collective responsibility, except "where it is explicitly set aside".[37]

The two main ways in which the normal rules of collective responsibility are usually suspended are 'free votes' or an 'agreement to differ'. Although there may be occasions where the two concepts appear to merge into each other (as in 1977, see below). The basic difference is usually that:

- a free vote is one where there is no stated Government policy on the issue and therefore the question of dissent by some ministers does not arise.
- an agreement to differ is a situation where the Government has adopted a policy but has allowed ministers to dissent publicly from that policy to some degree for a limited period.

Free votes

Free votes are nowadays most commonly recognised in issues of conscience, for example social, moral or religious questions such as capital punishment, abortion or gay rights, or Private Members' Bills, or

[37] *Cabinet Manual*, para 4.2

in certain votes on changes to parliamentary procedure. But free votes may also be used as a device to avoid a Parliamentary defeat, or any serious consequences of a defeat.

A free vote, in particular circumstances, may be a recognition of a significant split within Government or its Parliamentary party, an attempt to construct a large cross-party majority, or a desire to avoid having to devise and announce a Government policy on a difficult issue.

Agreements to differ

The formal suspension of collective responsibility on a particular issue does not happen often, and is usually referred to as an 'agreement to differ'. Such examples have been allowed for limited periods and under certain rules agreed by the Government.

Previous examples of where exceptions to the principle of collective responsibility have been formally agreed include:

- On tariff import policy in 1932.
- On the 1975 referendum on the UK's membership of the European Economic Community.
- On direct elections to the European Assembly in 1977.
- On various issues under the 2010–15 Coalition Government, including the 2011 referendum on the alternative voting system for general elections, as agreed in the 2010 Coalition Agreement.
- On the 2016 referendum on the UK's membership of the European Union.

When questioned about collective responsibility and the agreement to differ he had announced in 1977, the Prime Minister, James Callaghan, said, "I certainly think that the doctrine should apply, except in cases where I announce that it does not".[38] This demonstrates that the terms, duration and enforcement of an agreement to differ are, ultimately, a matter for the Prime Minister.

Some of the limited literature on the laying aside of collective responsibility has expressed concern about its suspension. In 1977, for example, Professor Nevil Johnson, a constitutional expert at Nuffield College, Oxford, wrote in a letter to *The Times* that:

> The British Constitution is unique in the degree to which it rests on convention and practice: this is the main reason why it has been both flexible and yet resistant to radical change. Yet it now appears that our constitution as atrophied to a point at which it expresses only one principle, namely that any rule or convention thought to be a part of it may be suspended or evaded if the Government of the day believes that this is required for the sake of holding together the party in power.

[38] HC Deb 19 June 1977 vol 933 c552

> The rule that the Cabinet is collectively responsible to Parliament for its actions is apparently now satisfied if the Cabinet decides that on a particular issue each member may do what he pleases.[39]

Lord Falconer of Thoroton told the House of Lords Constitution Committee in 2014 that departures from collective responsibility weaken:

> …the authority of the Prime Minister and the Government. It makes members of the Government think not 'What is best for the Government?' but 'What is best for my faction or me in the Government?' That is hugely damaging.[40]

However, others have argued, in effect, that as an agreement to differ is itself a collective Cabinet decision, any subsequent split between fellow ministers on an issue is not a breach of collective responsibility, but an exercise and product of it.

For example, in the 1932 debate on the agreement to differ on tariff policy, the Lord President, Stanley Baldwin, declared that "we have collective responsibility for the departure from collective action".[41] Similarly, in his evidence to the court in the case of the Crossman diaries, the then Cabinet Secretary, Sir John Hunt said: "I would not regard [the 1975 EEC referendum] as breaching collective responsibility because this was a decision by the Cabinet as a whole to waive collective responsibility on one particular issue for a limited time. It was not a decision which any Minister took unilaterally […]".[42]

3.2 Examples of departures from collective responsibility

Heathrow Airport, 2016

The most recent departure from collective responsibility are the "special arrangements" put in place to allow certain Ministers (those who had obtained the approval of the Prime Minister first) some flexibility to set out their personal opinions on the proposed plan for a third runway at Heathrow Airport. The rest of the Cabinet were still subject to the normal rules of collective responsibility. As such, this was not a formal agreement to differ.

On 25 October 2016 the Government announced its support for a new runway at Heathrow Airport.[43] Expansion at Heathrow is controversial. While it does have support from some sectors, particularly the business community, there is opposition from local and environmental groups. Several Cabinet Ministers, including the Foreign Secretary, Rt Hon Boris Johnson MP, and the Education Secretary, Rt Hon Justine Greening MP, have previously expressed views opposing expansion at Heathrow.

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39 'Tinkering with the constitution', *The Times*, 22 June 1977, Professor Nevil Johnson, Nuffield College, Oxford

40 House of Lords Constitution Committee, Constitutional implications of Coalition Government, para 75

41 HC Deb 8 Feb 1932 vol 261 c535

42 H Young, *The Crossman Affair*, 1976, p84. The court case was *Attorney-General v Jonathan Cape [1976] 1 QB 752*

43 Details of the controversies are outlined in the House of Commons Library Briefing Paper, Heathrow Airport, 19 October 2016

When announcing the Government's decision to the House of Commons on 25 October 2016, the Secretary of State for Transport, Rt Hon Chris Grayling MP, was asked whether collective responsibility would apply to any votes on Heathrow expansion. In his response, Mr Grayling said:

> The Prime Minister has been very clear that she does not want to force […] MPs who have long-standing principles of disagreement over this issue to go against their own views. There are different views on both sides. There are senior figures on the Opposition Front Bench and on the Government Front Bench who disagree with this decision […] the majority of Members believe that Heathrow is the right place for expansion. Of course, the whole House will, as part of this statutorily defined process, have to vote and approve the decision. I think we should respect people's long-standing views and not ask them to go against what they have argued in the past.[44]

Prior to this, on 18 October 2016, a political correspondent for ITV had tweeted images of a "Personal Minute" from the Prime Minister on the issue of airport capacity.[45] The Minute stated that once the Economic and Industrial Strategy (Airports) sub-Committee had reached a decision on airport capacity, that decision "will be subject to the *Ministerial Code* in the usual way, including the rules of collective responsibility".

However, the Minute also stated that the Prime Minister recognised that "colleagues have strongly held views on the issue and in some instances are faced with significant constituency interests". It therefore explained that a "special arrangement" would be put in place, allowing "certain Ministers some flexibility to set out publicly their personal position on the matter".

The alleged Minute set out how these arrangements would work. Ministers who had previously expressed strong opinions on the issue or who have a directly-affected constituency, would "**not** be expected publicly to advocate the Government's collective decision", and would be permitted, as part of the public debate, to restate longstanding views on the matter already on the public record. These ministers would be required to seek the Prime Minister's approval first; all other ministers were expected to abide by the normal rules of collective responsibility.

The "special derogation" set out in the Minute also contained a number of further caveats:

> …no Minister will be permitted to campaign actively against the Government's position, nor publicly criticise, or call into question the decision-making process itself. Ministers will not be permitted to speak against the Government in the House.

An October 2016 blog from the Institute for Government argued that the decision to depart from the normal arrangements surrounding collective responsibility for an infrastructure decision is "highly unusual":

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44 HC Deb 25 Oct 2016 c178

45 The correspondent was Carl Dinnen. See: https://twitter.com/carldinnen, 18 October 2016

> Heathrow is a policy choice that has already caused a huge amount of division, and one that crosses party lines. But ultimately it is simply an infrastructure decision. This makes the suspension of collective cabinet responsibility all the more unusual.
>
> During the Coalition, we saw a number of suspensions for the Liberal Democrats. But those were about finding a mechanism to hold a coalition government together. It would say a lot about the current make-up of the Cabinet, and the Conservatives more generally, if they started to use agreements to differ to manage divisions within a single party.[46]

Referendum on the UK's membership of the European Union, 2016

The most recent example of a formal agreement to differ was during the UK's referendum on membership of the European Union.

The position of the UK Government was to recommend that Britain remain part of the EU, following the agreement of changes to the status of the UK in the EU, negotiated by the then Prime Minister, David Cameron, in February 2016. However, the Prime Minister had previously stated in the House of Commons on 5 January 2016 that, while it was his intention that there would be a "clear Government position" on the referendum, "it [would] be open to individual ministers to take a different personal position while remaining part of the Government".[47]

Guidance to Ministers

The Prime Minister provided guidance to ministerial colleagues in a letter of 11 January 2016 on how the agreement to differ would work in practice. His letter described the arrangement as being "wholly exceptional" and applying only to whether the UK should remain in or leave the EU.[48]

All other EU and EU-related business, including negotiations in or with all EU institutions and other Member States, and debates in Parliament on EU business, continued to be subject to the normal rules of collective responsibility and party discipline. The guidance emphasised that in Parliament "Ministers speak from the Front Bench, and when they do they support Government policy".[49] Although ministers would be able to take a different view on the UK's EU membership, the Prime Minister stated that, for the system to work, ministers would "need to be flexible and apply common sense".[50]

Guidance to Civil Servants

In his letter to ministers on the 11 January, the Prime Minister said that it would not be appropriate for civil servants to "support Ministers who oppose the Government's official position by providing briefings or speech material on the issue of the UK's continued membership of the

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46 Institute for Government, Loose bindings: collective cabinet responsibilities and the Heathrow decision, 24 October 2016
47 HC Deb 22 Feb 2016 c24
48 Office of the Prime Minister, 'Letter by the Prime Minister to Ministerial Colleagues: EU Referendum', 11 January 2016
49 Ibid.
50 Ibid.

EU".[51] The Prime Minister also said that ministers who oppose the Government's position "will be able to draw on personal help and advice from the Special Advisers", until the last 28 days of the campaign, provided this did not draw on official or departmental resources.[52]

The Cabinet Secretary and Head of the Civil Service, Sir Jeremy Heywood, subsequently published guidance for civil servants and special advisers on how they should conduct themselves in the period prior to the final 28 days of the campaign. This emphasised that, while ministers were allowed to express their own views on the referendum, civil servants must support the Government of the day in developing and implementing its policies, and the Government's clear recommendation was that the UK should "remain a member of a reformed EU".

Sir Jeremy's guidance stated that it will not be appropriate or permissible for the Civil Service to support ministers who oppose the Government's official position by providing briefing or speech material on this matter".[53] This included access to official departmental papers, excepting papers that ministers have previously seen on issues relating to the referendum question prior to the suspension of collective agreement. These rules also applied to special advisers.[54]

Sir Jeremy's guidance also clarified the briefings that civil servants could provide:

> Departments should continue to provide support in the normal way to Ministers operating in their ministerial capacity. This should include support for meetings on government business, ministerial visits and attendance at external events relating to government policy. Civil servants can draft ministerial speeches and provide briefing on government policy for Ministers to use at such events, including those organised by groups campaigning for the same outcome as the Government on the EU referendum. Ministerial briefing may explain the UK Government's policy position and offer comment on other policy positions in the usual way. As with any other policy position, civil servants may advise Ministers on the likely pros and cons of different approaches and how they could be implemented.[55]

Dispute over the role of the Civil Service

Sir Jeremy Heywood's guidance to civil servants was criticised by some MPs. On 24 February 2016 the Minister of State for Employment, Priti Patel MP, published a statement on the Vote Leave campaign organisation's website, which claimed that the Cabinet Secretary's guidance was "unconstitutional". She argued that Secretaries of State would be prevented from being made aware of the information they needed to fulfil their ministerial duties.[56]

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51 Ibid.
52 Ibid.
53 Letter from the Head of the Civil Service: EU Referendum: Guidance for the Civil Service and Special Advisers, 23 February 2016
54 Ibid.
55 Ibid.
56 House of Lords Library Note, Ministerial Collective Responsibility and Agreement to Differ: Recent Developments, 4 March 2016, p3

On 29 February 2016, Bernard Jenkin MP, Chair of the Public Administration and Constitutional Affairs Select Committee, asked an Urgent Question in the House of Commons on the guidance to civil servants.[57] Mr Jenkin argued that the Government's guidance endangered the established requirement that ministers are accountable to Parliament for their Department's actions. He also raised the issue of internal 'Questions and Answers' guidance provided to Civil Servants, which he suggested conflicted with requirements in the Civil Service Code.[58]

> What about the Q and A briefing? Does the Minister deny that permanent secretaries have been instructed to conceal information requested by Downing Street or the Cabinet Office from a dissenting Minister? The Cabinet Secretary's letter states that "Departments may check facts", but civil servants have also been told that they cannot "provide arguments or new facts". How is that consistent with the duty of honesty in the civil service code, which requires a civil servant to "set out the facts and relevant issues truthfully"? Does the Minister agree that where any guidance or instruction conflicts with the code, the code must prevail?[59]

Matthew Hancock MP, the Minister for the Cabinet Office, said in response that the letter from the Cabinet Secretary makes it clear that "factual briefing is allowed".[60] The Minister also set out the Government's position on the role of the civil service during the referendum campaign:

> The process is clear: Ministers may depart from the Government position in a personal capacity on the specific question of the referendum. On all other matters, including on other EU business, the Government will operate as normal, and in all things the civil servants support the Government position.
>
> […] The guidance is clear. Other than on the specific question of the referendum, all Ministers can commission and see all documents, as normal. On the question of the referendum—and on this question alone—Ministers who disagree with the Government position naturally cannot commission policy work on the in/out question or see documents setting out details of the case to remain. All Ministers can ask for factual briefing, and for facts to be checked in any matter. All Ministers can see documents on EU issues not related to the referendum question, as normal.[61]

Sir Jeremy Heywood gave evidence on the guidance to the Public Administration and Constitutional Affairs Select Committee on 1 March 2016. Sir Jeremy said that the 2016 guidance was based on the guidance used in 1975 and that it is a statement of common sense that "if the Government has a position, that is the position that the civil service will support".[62] He added that the Government would not "deny

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57 HC Deb 29 February 2016 c691
58 HM Government, 'Q&A: EU Referendum Guidance to Civil Servants', 2016
59 HC Deb 29 February 2016 c692
60 HC Deb 29 February 2016 c692
61 HC Deb 29 February 2016 c691
62 House of Commons Public Administration and Constitutional Affairs Select Committee, Oral Evidence: EU Referendum: Civil Service Guidance, 1 March 2016, HC 792, Q3

ministers the information they [needed] to run their departments" and said that "pure facts" and statistics would not be withheld from ministers.[63] According to Sir Jeremy, the intention behind the guidance was to prevent ministers from using government resources "to attack the Government", meaning that civil servants would not be able to provide "arguments to use" or "rebuttal points" for ministers.[64] Sir Jeremy argued that this was because "it is not right that Ministers who have personally chosen to exempt themselves from collective responsibility should continue to get the full weight and support of the civil service to enable them to attack the Government".[65]

Following the evidence session, Bernard Jenkin MP told the press that he was "reassured" after PACAC's session with Sir Jeremy, although his call for the Q&A guidance to be withdrawn was rejected.[66]

Agreements to differ under the Coalition Government, 2010-2015

During the Conservative-Liberal Democrat Coalition Government of 2010-2015 there were a number of agreements to differ. The *Ministerial Code* issued in October 2010 allowed for the possibility of departure from collective responsibility. It stated that the principle applied "save where it is explicitly set aside".[67]

The Coalition Government's programme for government set out five areas where the parties to the coalition might adopt different positions. These were:

- the AV referendum (both parties would be whipped to support the bill for a referendum, "without prejudice to the positions parties will take during such a referendum");
- university funding (arrangements would be made for Liberal Democrat MPs to abstain, if the Government's response to Lord Browne of Madingley's report was one the party could not accept);
- the renewal of Trident ("Liberal Democrats will continue to make the case for alternatives");
- nuclear power (the *Programme* provided for a Liberal Democrat spokesman to speak against the relevant National Planning Statement, but for Liberal Democrat MPs to abstain); and
- a tax allowance for married couples (where provision would be made for Liberal Democrat MPs to abstain on the relevant budget resolutions).[68]

According to a report by the House of Lords Constitution Committee, *Constitutional implications of Coalition Government* (February 2014), there was also a contentious departure from collective responsibility

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63 Ibid, Q51, Q61
64 Ibid Q84
65 Ibid Q84
66 'Bernard Jenkin "reassured" after grilling civil service boss Sir Jeremy Heywood', *BBC News*, 1 March 2016
67 Cabinet Office, *Ministerial Code*, October 2010, para 2.1
68 HM Government, *The Coalition: our programme for government*, 20 May 2010

without a formal agreement to differ in early 2013, when Conservative and Liberal Democrat parliamentarians, including ministers, voted in opposite lobbies on an amendment to the Electoral Registration and Administration Bill. The report highlighted that:

> The amendment delayed the review of parliamentary constituency boundaries that was due to occur under the Parliamentary Voting System and Constituencies Act 2011—a policy that was in the coalition agreement. The Deputy Prime Minister had announced in summer 2012 that he would instruct Liberal Democrats to vote against the boundary review after the House of Lords Reform Bill was withdrawn due to an apparent inability to obtain a Commons majority for a programme motion on it. The decision by the Deputy Prime Minister to support the amendment was not taken by the Government collectively.[69]

The Constitution Committee's report also highlights other occasions where ministers from the two coalition parties had expressed different views. For example, on the day that the Leveson report was published in 2012, the Prime Minister and the Deputy Prime Minister made separate statements in the House of Commons in response to it. "In that case", the report states, "there was no collective government position on how to respond to the report, so it may be thought that the convention of collective responsibility did not apply".[70]

Hospital rationalisation in Scotland, 2003

The devolved Scottish administration has adopted the convention of collective responsibility, and the convention was also "relaxed" there in 2003 to allow Culture Minister Mike Watson MSP and Janis Hughes MSP, his ministerial parliamentary aide, to dissent from the Scottish Government's proposals for hospital rationalisation in their Glasgow constituencies.[71]

On 12 August 2003 the Scottish Health Minister announced his approval of the proposals of the local NHS body in Glasgow to provide for a substantial shift in the provision of hospital services. Opponents were concerned about the apparent loss of existing services. Several Labour MSPs, including Mike Watson, were reported to have publicly expressed their opposition to the policy. However, dissenting Labour MSPs were forced to publicly declare their positions in a vote on 12 September 2003, after the Scottish National Party secured a debate on the hospital review.[72]

On the first vote, on an Executive amendment to the main SNP motion, Watson voted with the Executive, while Hughes abstained along with four others. The amendment was carried 62-52-5. On the second vote, on the main motion as amended, both Watson and Hughes voted in favour and the motion was carried 65-52-2.[73]

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69 House of Lords Constitution Committee, *Constitutional Implications of Coalition Government*, 5 February 2014, para 70
70 House of Lords Constitution Committee, *Constitutional Implications of Coalition Government*, 5 February 2014, para 72
71 P Lynch, 'Governing Devolution: Understanding the Office of First Minister in Scotland and Wales', *Parliamentary Affairs*, 2005, Vol. 59 No. 2, p14
72 Winetrobe, 'Collective responsibility in devolved Scotland', pp24-26
73 Ibid p27

Watson defended his decision to support the Executive and remain a minister on the grounds that he was bound by collective responsibility.[74] Hughes also did not resign, nor was she dismissed, despite abstaining on the first vote.[75]

According to Barry Winetrobe, a senior research fellow at the Constitution Unit, as far as Mike Watson was concerned:

> The general consensus was that he had broken the spirit, and probably the letter, of the Executive guidance on collective responsibility, and should have resigned or been dismissed…The First Minister was criticised for not imposing any sanction on Watson…".[76]

While neither Hughes nor Watson were immediately dismissed, according to Peter Lynch, "telling" neither survived in their positions after the 2003 Scottish elections.[77]

3.3 European Direct Assembly Elections, 1977

In 1977 the Labour Government agreed that ministers could vote in Parliament against legislation that would create direct elections for UK members of the European Assembly (the precursor to the European Parliament). This is often regarded as an 'agreement to differ', although it is a less clear-cut example, as ministers were allowed a free vote but within the context of stated Government support for the measure. In the following session, on a similar piece of legislation, ministers were apparently not permitted to vote against it (although some did) but were allowed to abstain.[78]

In 1976 European Community member states had agreed to try and implement legislation for direct elections to the European Assembly for Spring 1978. Prime Minister James Callaghan finally announced the Government would recommend a form of voting system in 1977, following consultations on a White Paper.[79] He promised that "whatever the final recommendations on these matters, it will be subject to a free vote of both Houses of Parliament. As far as the Government are concerned all hon Members will be entitled to vote in any way that they think fit".[80] According to Tony Benn (MP for Bristol South East at the time), the Prime Minister announced that there would be a free vote for Cabinet ministers on the bill at a Cabinet meeting on 26 May.[81]

On 16 June 1977, when challenged by Margaret Thatcher about reports that collective responsibility was being suspended over the direct elections legislation, the Prime Minister said, famously, that "I certainly

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74 Ibid p28
75 Ibid p28
76 Ibid pp28-29
77 Lynch, 'Governing Devolution' p14
78 For a more detailed summary of this, see House of Commons Library Research Paper, *The Collective Responsibility of Ministers – an outline of the issues*, 15 November 2004, RP04/82, pp31-33
79 Cmnd 6768, 1 April 1977
80 HC Deb 23 March 1977 vol 928 c1307; Tony Benn, *Conflict of Interest: diaries 1977-80*, pp85-91
81 Benn, *Conflict of Interest*, p 153-154

think that the doctrine should apply, except in cases where I announce that it does not".[82] When asked by Arthur Lewis MP if the 'agreement to differ' extended to permitting dissident ministers to support or sponsor anti-bill organisations, Mr Callaghan said that the question was "hypothetical".[83]

When the bill was published, the Government announced that it was recommending a regional list system of voting. On 6 July 1977 Second Reading of the bill was carried 394-147, but six Cabinet ministers, including Tony Benn and Michael Foot, along with 25 other members of the Government, opposed the bill on direct elections, and it made no further progress that session.

The following session, a similar bill was introduced. During the Queen's Speech debate the Prime Minister said he believed the Government was bound by its Community obligations "and that therefore we must proceed…There will be a free vote for Government supporters on the method of voting".[84] Tony Benn's diaries quote Michael Foot as saying that there would be a three-line whip on the Second Reading.[85] Dissident Ministers were expected to do no more than abstain.[86] During Second Reading on 24 November 1977, the Home Office Minister, Brynmor John confirmed that there would be a free vote on the voting system.[87] It was given a Second Reading, with seven Cabinet ministers – including the previous six dissenters – and twenty other members of the Government abstaining.

Cabinet unity was again tested during the vote on the regional list voting system on 13 December. The Home Secretary, Meryln Rees reminded the House that "the Government favour the regional list system, but Government supporters will have a free vote on the issue".[88] The proposal was defeated 319 to 222. On 26 January 1978 a guillotine motion was passed, limiting the debate time of the bill, which passed 314-137. Four Cabinet Ministers dissented, thereby defying a two-line whip.[89]

European Economic Community Referendum, 1975

During the 1975 referendum on whether the United Kingdom should remain a member of the European Economic Community, ministers were permitted to dissent from the Cabinet's majority decision to recommend that the country remain a member of the EEC, although not in Parliament.

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82 HC Deb 16 June 1977 vol 933 c552
83 HC Deb 4 July 1977 vol 934 c934W
84 HC Deb 3 November 1977 vol 938 c32
85 T Benn, *Conflict of Interest: Diaries 1977-80*, pp 85-91
86 House of Commons Library Research Paper, *The Collective Responsibility of Ministers – an outline of the issues*, 15 November 2004, RP04/82, p32
87 HC Deb 24 November 1977 vol 939 c1771
88 HC Deb 13 December 1977 vol 941 c304
89 House of Commons Library Research Paper, *The Collective Responsibility of Ministers – an outline of the issues*, 15 November 2004, RP04/82, p33

Europe had caused divisions within, as well as between, the two major parties for some time, and the Labour Government had come into office in 1974 pledging to renegotiate the terms of UK entry and to allow the people to vote on the outcome, either by a referendum or general election. In a statement on 23 January 1975 the Prime Minister, Harold Wilson, announced that a referendum would be held in June. Although at that point the Government had not yet made its recommendation for the country, the Prime Minister said that the Cabinet had decided that if when the time comes there are members of the Government, including Cabinet ministers, who do not feel able to accept and support the Government's recommendation, they would be "free to support and speak in favour of a different conclusion in the referendum campaign".[90]

On 7 April 1975 the Prime Minister set out guidelines for the agreement to differ. He confirmed that ministers who did not agree with the Government's now stated recommendation of continued membership were "free to advocate a different view during the referendum campaign in the country". The freedom, however, did "not extend to parliamentary proceedings and official business". According to the Prime Minister:

> Government business in Parliament will continue to be handled by all Ministers in accordance with Government policy. Ministers responsible for European aspects of Government business who themselves differ from the Government's recommendation on membership of the European Community will state the Government's position and will not be drawn into making points against the Government's recommendation. Wherever necessary Questions will be transferred to other Ministers.[91]

Harold Wilson's guidance on how the agreement to differ would work included an instruction that ministers should avoid personalising and trivialising their arguments, and that ministers "not allow themselves to appear in direct confrontation, on the same platform or programme", with another minister who takes the opposing view.[92]

This rule was to be relaxed during the last four days of the campaign.[93] In their book on *The 1975 Referendum*, election experts Sir David Butler and Dr Uwe Kitzinger note that:

> After Peter Shore had been forced by 10 Downing Street to refuse a Panorama programme permission to use an excerpt from his remarks in the same programme as appearances by pro-Market ministers, the Prime Minister on May 23 modified the guidelines and said that in the final four days of the campaign ministers could confront each other in television programmes.[94]

Problems in Parliament

The guidelines that Wilson had originally set out were immediately tested in Parliament. On 9 April 1975, during a debate on the

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90 HC Deb 23 January 1975 vol 884 c1746
91 HC Deb 7 April 1975 vol 889 c351W
92 HC Deb 7 April 1975 vol 889 c351W
93 D Butler and U Kitzinger, *The 1975 Referendum*, Second Edition, 1996, pp53&164
94 Ibid p164

Government's decision to approve continued membership of the EEC, the Minister of State for Industry, Eric Heffer, said that he believed "the guidelines of the Common Market are as unacceptable as the guidelines on the question of ministerial discussion in the House".[95] He was immediately dismissed. The Prime Minister wrote to inform him that "your deliberate decision to speak against the Government's motion in today's debate, although you had been informed of the Cabinet's decision that ministers who dissented…should not speak in the debate, makes it impossible for me to retain you in the Government".[96]

Michael English MP, a Labour backbencher, had also previously asked the Speaker if the announced guidelines were a contempt and breach of privilege, because they restricted ministerial freedom to participate in Parliamentary proceedings.[97] The Speaker ruled, however, that "in general, I think that arrangements made within political parties in this House would be unlikely to raise questions of contempt or privilege. Also, the Chair must be careful not to appear to be trying to interfere in such arrangements". The Speaker believed that the guidelines meant that "the new element is freedom to dissent in the country, not any change in the normal practices in this House".[98]

There were other difficulties for normal conduct in Parliament.[99] For example, the 7 April guidelines envisaged the transfer of relevant PQs from dissenting to other ministers. [100] Tony Benn MP, when answering questions, would sometimes resort to the device of quoting "the views of the Government on this issue".[101] Peter Shore, Secretary of State for Trade, responding to a question from Norman Tebbit on 5 May, explained that "When I am speaking from the Dispatch Box I am reflecting Government policy as a whole, except when I am clearly reflecting my own policy as the Secretary of State for Trade".[102]

Perhaps the most interesting instance of public Parliamentary dissent was the Early Day Motion put down by the dissenting ministers on 18 March, the day of Mr Wilson's statement on the outcome of negotiations (and before the 7 April guidelines). It welcomed the referendum and urged all Members to campaign for withdrawal:

> That this House welcomes the referendum; believes that only by the consent of the British people can the supreme issue of membership of the Common Market be settled; further believes that it is the true interest of the British people to regain the essential rights which permanent membership of the Common Market would deny them, namely the right of democratic self-government through their own elected Parliament, the right to determine for themselves how they impose taxes and fix food prices, the right to pursue policies designed to ensure full

95 HC Deb 9 April 1975 vol 889 c1332
96 House of Commons Library Research Paper, *The Collective Responsibility of Ministers – an outline of the issues*, 15 November 2004, RP04/82, p29
97 HC Deb 8 April 1975 vol 889 c1018
98 HC Deb 9 April 1975 c1238
99 See A Silkin, 'The agreement to differ of 1975 and its effect on ministerial responsibility', *Political Quarterly*, 65 (1977), pp69-73
100 See HC Deb 21 April 1975 vol 890 cc980-982, c973
101 See for example HC Deb 21 April 1975 vol 890 c973 and 199W
102 HC Deb 5 May 1975 vol 891 c999

> employment, and the right to seek co-operation and trade with other nations in a world-wide framework; and therefore urges Right honourable and honourable Members to campaign for the withdrawal of the United Kingdom from the Common Market, and to invite their fellow-citizens to join them.[103]

However, David Butler and Uwe Kitzinger have argued that the 1975 agreement to differ did in fact "work more smoothly than many expected". According to them:

> The general running of government was carried on in the normal way and there were remarkably few leaks about cabinet affairs or lapses into public ministerial infighting.[104]

Differences between the 2016 and 1975 agreements to differ

Although both the 2016 and 1975 agreements to differ concerned the contentious issue of Britain's relationship with Europe, Peter Riddell, then Director of the Institute for Government, identified several differences between the 2016 and 1975 agreements to differ, particularly around the role of the civil service. These included the regulation of civil servants work during the 28 day campaign period, as set out in the Political Parties, Elections and Referendums Act 2000, and the larger numbers of special advisers and the expansion of their role since 1975.

> In one of the main differences with 1975, what happens during campaign periods is now formally regulated under the 2000 Political Parties, Elections and Referendums Act. An attempt to change this to allow the Government more flexibility on EU issues during the campaign was defeated in the Commons in September.
>
> […]
>
> The other big difference compared with 1975 is the growth in numbers and role of special advisers, then just starting to appear. The Prime Minister's recent guidance said that ministers opposing the Government's official position will be able to draw on personal help from their special advisers, provided this is in line with their wishes and does not draw on official resources. And ministers can work with external campaign teams. Separate rules will apply to special advisers during the final 28 days of the campaign.[105]

Tariffs Policy, 1932

The first official 'agreement to differ' occurred in January 1932 because of disagreements in the National Government between the Conservatives and their coalition partners over tariff reform.

By 1931, with the onset of the Great Depression, rising UK unemployment, and a series of trade barriers implemented in foreign markets, the Cabinet was considering import tariffs. The enactment of the Import Duties Act in February 1932 inaugurated protectionism in Britain, bringing to an end a long period of commitment to free trade.

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[103] Early Day Motion No. 355, *Common Market referendum*, 18 March 1975 (1974-75)
[104] D Butler and U Kitzinger, *The 1975 Referendum*, Second Edition, 1996, p53
[105] Institute for Government, Government and the EU Referendum, 19 February 2016

The Act placed a 10 per cent tariff on manufactured imports, while foods, raw materials and empire manufactures were exempted. The Import Duties Advisory Committee would subsequently raise the tariff to 20 per cent.[106]

Prior to this, in the October 1931 General Election, the coalition candidates agreed not to stand in opposition to each other despite the clear split over tariffs. After the election, four members of the Cabinet disagreed with the decision to impose a general tariff and proposed to resign.[107] The Prime Minister, Ramsay MacDonald, persuaded them not to do so by offering to allow them to express their disagreement publicly. The dissenters demanded that they be free to speak and vote against any tariff proposals, that MPs have the same freedom and that the whips not exert any influence to persuade Members to support the Government line.[108]

The official terms of the 'agreement to differ' were published in *The Times* of 23 January 1932:

> The Cabinet has had before it the report of the Committee on the Balance of Trade, and after prolonged discussion it has been found impossible to reach unanimous conclusion on the Committee's recommendations. The Cabinet, however, is deeply impressed with the paramount importance of maintaining national unity in presence of the grave problems that now confront this country and the whole world. It has accordingly determined that some modification of usual Ministerial practice is required and has decided that Ministers who find themselves unable to support the conclusions arrived at by the majority of their colleagues on the subject of import duties and cognate matters are to be at liberty to express their views by speech and vote. The Cabinet, being essentially united on all other matters of policy, believes that by this special provision it is best interpreting the will of the nation and the needs of the time.[109]

This novel constitutional situation was debated in both Houses. In the Commons on 8 February, on a no-confidence motion,[110] George Lansbury, Leader of the Opposition, claimed that "there can not be any such thing as a collective conscience" and demanded that the dissenting ministers "tell us whether they would both speak and vote against the Government if by so doing they would turn the Government out". He said he was not against a permanent change to the constitutional theory of collective responsibility, or that there should never be any exceptions to the general rule.[111]

For the Government, Stanley Baldwin, then Lord President of the Council, said that the British constitution was a "living organism" whose flexibility was beneficial to the country, and surveyed the history

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106 National Archives, 'Policy, Protectionism and imperial preference', The Cabinet Papers, 1915-1988

107 They were Lord Snowden, Lord Privy Seal (National Labour); Sir Donald Maclean, President of the Board of Education; Sir Archibald Sinclair, Scottish Secretary; and Sir Herbert Samuel, Home Secretary (all Liberals).

108 I Jennings, *Cabinet Government*, 3rd edition, 1965, pp279-281

109 'Cabinet and Tariffs', *The Times*, 23 January 1932, p10

110 HC Deb 8 February 1932 vol 261 c515

111 HC Deb 8 February 1932 vol 261 c515

of Cabinet responsibility. The fact that the Government was a 'National' rather than a party one, and one with a huge majority (of 493), meant that the usual constitutional conventions of collective responsibility were not at stake:

> The fate of no party is at stake in making a fresh precedent for a National Government. Had the precedent been made for a party Government, it would have been quite new, and it would have been absolutely dangerous for that party.[112]

He continued:

> Is our action constitutional? Who can say what is constitutional in the conduct of a national Government? It is a precedent, an experiment, a new practice, to meet a new emergency, a new condition of things, and we have collective responsibility for the departure from collective action. Whatever some ardent politicians may think, it is approved by the broad common sense of the man-in-the-street. The success or failure of this experiment will depend on one thing only, and that is the spirit in which it is conducted.[113]

The motion was rejected by 39-438.[114]

In an article for *Political Quarterly* on the agreement, Arthur Silkin, a former civil servant and lecturer in public administration at the Civil Service College, concluded that the dissenting ministers "refrained from making any general criticism of the National Government's policy until they all resigned over the decision to give effect to the Ottawa agreements on imperial preference on September 28, 1932".[115]

Differences between the 1932 and 1975 agreements

In his article for *Political Quarterly*, Arthur Silkin set out several differences between the agreements to differ in 1932 and 1975. According to Silkin, in 1932 dissident ministers were allowed to make their disagreement known from the Front Bench. In 1975 this was not allowed. Harold Wilson's reasoning was that in 1932 the only opportunity available for ministers to make their disagreement known was during a debate in the House of Commons. In 1975, the decision to hold a referendum enabled them to campaign publicly.[116]

Another difference was that in 1932 none of the dissident ministers had any departmental responsibilities for matters connected with the area of disagreement, unlike in the much broader context of EEC membership in 1975.[117]

Thirdly, according to Silkin, the area of the 1975 disagreement was in practice broadened, at any rate while the referendum campaign was in

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112 HC Deb 8 February 1932 vol 261 c534
113 HC Deb 8 February 1932 vol 261 c535
114 Ibid
115 A Silkin, 'The agreement to differ of 1975 and its effect on ministerial responsibility', *Political Quarterly*, 65 (1977), p67. The Ottawa agreements established a system of bilateral trade deals between colonies and dominions of the British Empire, designed to ensure low tariffs and free trade within the Empire. The system was refer to as 'Imperial preference'.
116 Silkin, 'The agreement to differ of 1975', p68
117 Ibid

progress, to cover issues extraneous to the EEC, whereas the differences arising out of the 1932 agreement appear, with the one possible exception already mentioned, to have been limited to the area for which these special arrangements had been made, that of protective tariffs.[118]

A final, notable difference was that in 1975 the agreement to differ covered a single-party government:

> the 1932 arrangements covered Ministers of different parties, who were, at least in original intention, united for a limited purpose and duration, those in 1975 concerned members of the same political party. It therefore sanctified the idea that Ministers of the same political party could publicly disagree over important issues, even though admittedly for a limited duration, still remaining Ministers.[119]

[118] Ibid, pp.68-69
[119] Ibid, pp.68-69

4. Early Origins and Development

Summary

The idea that all Ministers should speak with one voice arose in the eighteenth century to protect Ministers from the Monarch's attempts to undermine their power by exposing or encouraging public arguments.

Eighteenth century

The early beginnings of the doctrine of collective responsibility can be traced back to the reign of George III (1760-1820). An earlier predecessor to the 'Cabinet' during this period was a meeting of the king's individual ministers. The king did nearly all of his business with ministers in the room called his 'closet', and would normally see each minister one by one.

According to Professor Richard Pares, a historian of George III's reign, ministers learnt how to counteract the king's tendency to separate and confine them on particular issues. On any question of general political importance, ministers would "agree beforehand what to say, and then go into the closet one by one, and repeat the identical story".[120]

From this grew the practice of the government submitting unified advice to the monarch, without indication of any internal dissent.[121]

Late-eighteenth and early-nineteenth century

Gradually, the government's power grew as it took over the monarch's control through patronage of Parliament, and of the great offices of state, especially those with seats in the Cabinet. Within these developments grew the position of the Prime Minister as the link between the politicians (ministerial and Parliamentary) and the monarch, and the practical focus of ministerial allegiance as opposed to the formal loyalty owed to the monarch.

Although the monarch retained formal power of appointment and removal of ministers and ministries, the development of collective solidarity made it increasingly difficult for the King or Queen to exercise such power freely against the wishes of the Prime Minister and Cabinet. Governments could begin to contemplate policies, such as Catholic emancipation, known to be opposed by the monarch, bolstered by the ultimate threat, stated or otherwise, of the unanimous resignation of a ministry.

Alongside these developments, spurred by the various Reform Acts of the nineteenth century, was the growing need of the executive to control Parliament, and the House of Commons in particular, as the true practical source of its authority. If the monarch, and later the government, could not entirely control Parliament by patronage, it would have to be done by group discipline. If elections were to become more genuine contests with unpredictable outcomes, then like-minded

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120 R Pares, *George III and the politicians*, 1953, pp148-149
121 G LeMay, *The Victorian Constitution*, 1979, pp.105-106

politicians would have to band together in parties to win sufficient strength in Parliament to compete for office. Control of Parliament was vital as the idea of confidence crystallised and it became essential for the governments to retain a notional majority, at least.

Development of today's convention of collective responsibility

The development of today's concept of collective responsibility arose during the so-called Victorian 'golden age' of Parliamentary government, that is, at a time when Cabinets and governments were much smaller and the business of government much less than nowadays. This made it potentially easier during the nineteenth century for an administration to be composed of like-minded people around the Cabinet table.

Westminster politics and Whitehall government were much more localised and personal affairs in which many of the participants would be known, to some degree, to each other, and were sometimes even related. Ministerial confidentiality and an outward appearance of unanimity helped to prevent or at least minimise political and social embarrassment for the monarch's ministers.[122]

The growth of genuinely national politics; the extension of the franchise; the huge increase in the size of government and its business, and the growth of the media could all have led to a diminution or abandonment of a strict doctrine of collective responsibility. In fact these factors led to the retention of the principle, if only to ensure that, in the face of such diversity, ministerial unanimity was a practical device which prevented fragmentation of publicly-expressed opinion by ministers.

[122] LeMay, *Victorian Constitution*, p109-110

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