

Debate Pack

Number CDP 2021/0149

By,
Jennifer Brown,
Maria Lalic,
Sue Holland
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Criminal justice response to public disasters

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1 Background

On 26 May 2021 the Nightingale Court at The Lowry Theatre in Manchester found Peter Metcalf, former Chief Superintendent Donald Denton and former Detective Chief Inspector Alan Foster had no case to answer on charges of perverting the course of justice.¹ The men were alleged to have altered statements made by police officers to the 1990 Taylor Inquiry into the Hillsborough Disaster. The trial was the final criminal prosecution associated with the events during and in the aftermath of the Hillsborough Disaster. Its collapse has raised questions about the ability for the criminal justice system to respond to major disasters.

Lord Chancellor Robert Buckland responded to an [Urgent Question on the collapse of the trial](#) in June 2021. He noted that under the [section 35](#) of the Inquiries Act 2005 it is now an offence to (amongst other things) intentionally alter or destroy a document that one knows (or believes to be) relevant to a public inquiry. The offence was not available in the Hillsborough case because the 1990 Taylor Inquiry pre-dates the 2005 Act. It was set up as an administrative investigation for the Home Office rather than a statutory inquiry. Mr Buckland reassured the House that he is “confident” the section 35 offence would now apply in cases involving current inquiries set up under the 2005 Act (including the Grenfell Inquiry and the Coronavirus Inquiry).² The Library has discussed the 2005 Act in a [separate briefing paper](#).

1.1 Public advocate

There has been cross party support for the introduction of a public advocate to act on behalf of bereaved families after a public disaster and support them at inquests and inquiries.

In the 2017 Queen’s Speech the former Conservative Government committed to “introduce an independent public advocate, who will act for bereaved families after a public disaster and support them at public inquests”.³ The 2017-2019 Government ran a consultation on [establishing an Independent Public Advocate](#) in the Autumn of 2018. The consultation website says the Government is still analyzing the feedback and will publish its response soon.

Government position

In June 2021 Lord Chancellor Robert Buckland said the Government was “absolutely committed to ensuring that bereaved people are supported and

¹ CPS, [CPS statement on Hillsborough ruling](#), 26 May 2021

² HC Deb, [Hillsborough: Collapse of Trials](#), 10 June 2021, c1132

³ Cabinet Office and Prime Minister’s Office, 10 Downing Street, [Queen’s Speech 2017](#), June 2021

given a proper voice” following a public disaster. He said the responses to the public consultation on establishing an Independent Public Advocate were “varied” and that the Ministry of Justice would...

...do some more work...to bottom-out what the options might be in ensuring that any service is independent, has the confidence of those who use it and makes a difference, particularly in major public inquiries where many lives have been lost.⁴

Private Members Bill

Maria Eagle MP, the Member sponsoring this debate, currently has a Private Members Bill before Parliament which would provide for a Public Advocate ([Public Advocate Bill](#)). The Bill was introduced on 21 June 2021, its Second Reading is due to take place on 22 October 2021.

The Bill would allow the Lord Chancellor to nominate a public advocate to support the families and representatives of victims of a disaster involving major loss of life. The Lord Chancellor could only nominate a public advocate when more than half of the victim representatives request it. Under the Bill the public advocate would be able set up an “Advocate’s Panel” if over half the victim representatives request it. An Advocate’s Panel would be able to review all documentation relating to the event.

1.2

Duty to act with candour

There has been support for legislative reform to introduce a statutory duty on public servants to act with candour. There is already a common law offence of [misconduct in public office](#). A public office holder commits the offence if they “willfully neglect to perform their duty or willfully misconducts themselves to such a degree as to amount to an abuse of the public’s trust in their office”.⁵ There have been a number of calls for reform in this area:

- In December 2020 the Law Commission recommended the common law offence of misconduct in public office should be [abolished and replaced with two new statutory offences](#): an offence of corruption in public office and offence of breach of duty in public office. The Government is reviewing the Law Commission’s recommendations. It is expected to provide an interim response to its report.
- A Private Members Bill sponsored by Andy Burnham in 2017, the [Public Authority \(Accountability\) Bill](#), sometimes referred to as the “Hillsborough law”, enjoys Labour and Liberal Democrat support.⁶ The

⁴ HC Deb, [Hillsborough: Collapse of Trials](#), 10 June 2021, c1130

⁵ Law Commission, [Misconduct in public office: summary](#), December 2020, p2

⁶ BBC News, [Parties pledge to back 'Hillsborough Law'](#), December 2019

Bill fell before the 2017 General Election without receiving Second Reading. The Bill would have placed a duty on all public institutions, public servants and officials to act with “transparency, candor and frankness”. It would have created offences associated with “intentionally or recklessly” misleading the general public, the courts, or any inquiry or investigation.

- The Right Reverend James Jones in his [report on the experiences of the Hillsborough families](#) and the [Report of the Daniel Morgan Independent Panel](#) both recommended that a statutory duty of candour be implemented for police officers/ law enforcement agencies.

In June 2021 the Government said it was “considering” introducing a duty of candour for police officers as part of its response to Reverend James’ report. Baroness Trafford (Home Office Minister) said the Government will engage with the Hillsborough families before publishing its response to Reverend James.⁷

Existing rules for police officers

Police officers must always uphold the [policing standards of professional behaviour](#) (both on and off duty). There are ten standards of professional behaviour which include acting with “honesty and integrity” and not behaving in a way that discredits the police service. Officers who breach the policing standards can face disciplinary proceedings. If they are found guilty of misconduct/ gross misconduct at a disciplinary proceeding they face disciplinary action (a warning, reduction of rank or dismissal from the police service). The Library has explained more about police discipline in our paper on [police complaints and discipline](#).

1.3

Police charter for families bereaved through public tragedy

On 13 September 2021 the police service leaders signed the charter for families bereaved through public tragedy.⁸ The charter commits to the following six principles:

1. In the event of a public tragedy, support the activation of emergency plans and deployment of resources to rescue victims, to support the bereaved and to protect the vulnerable.

⁷ HL Deb, [Law Enforcement Agencies: Duty of Candour](#), 22 June 2021, cc134

⁸ College of Policing, [Bereaved families supported by new charter](#), 13 September 2021

2. Place the public interest above our own reputations.
3. Approach forms of public scrutiny – including public inquiries and inquests – with candour, in an open, honest and transparent way, making full disclosure of relevant documents, material and facts. Our objective is to assist the search for the truth. We accept that we should learn from the findings of external scrutiny and from past mistakes.
4. Avoid seeking to defend the indefensible or to dismiss or disparage those who may have suffered where we have fallen short.
5. Ensure all members of staff treat members of the public and each other with mutual respect and with courtesy. Where we fall short, we should apologise straightforwardly and genuinely.
6. Recognise that we are accountable and open to challenge. We will ensure that processes are in place to allow the public to hold us to account for the work we do and for the way in which we do it. We do not knowingly mislead the public or the media.

The College of Policing (the body responsible for professional standards in policing) said:

By signing the charter, policing is making a public commitment to learn the lessons of the Hillsborough disaster and its aftermath. This includes ensuring the perspective of bereaved families is not lost during the response of public organisations to major incidents and that families are treated with care and compassion at all times.⁹

The College also indicated that it and the National Police Chiefs Council would be publishing a joint response to Reverend Jones' report on the experiences of the Hillsborough families in the coming months.¹⁰

⁹ College of Policing, [Bereaved families supported by new charter](#), 13 September 2021

¹⁰ Ibid

2 Parliamentary Material

2.1 Ministerial Statements

[Hillsborough: Bishop James Jones review](#)

01 Nov 2017 | Written statements | House of Commons | HCWS215

2.2 Debates

[Law Enforcement Agencies: Duty of Candour](#)

HL Deb cc136-47, 22 June 2021

[Daniel Morgan Independent Panel Report](#)

HC Deb cc127-134, 15 Jun 2021

[Hillsborough: Collapse of Trials](#)

HL Deb cc1667-71, 14 June 2021

[Protecting the Public and Justice for Victims](#)

HC Deb cc1016-62, 09 Jun 2021

[Shoreham Air Show Crash: Access to Justice](#)

HC Deb, c54WH-62WH, 09 Jan 2018

[Public Disasters: Independent Advocate](#)

HC Deb cc733-35, 29 June 2017

2.3 Ten minute rule motion

[Public Advocate](#)

Ten minute rule motion for leave to bring in a Bill. Agreed to on question. Presentation and first reading (Bill 126).

22 Apr 2020 | Debates on bills | House of Commons | 675 cc69-50

Lead member: Eagle, Maria

Procedure: Private members' bills proceedings; Ten minute rule motions |
Legislative stage: First reading

2.4 Parliamentary questions

[Hillsborough Stadium Inquiry](#)

Asked by: Lord Alton of Liverpool

To ask Her Majesty's Government, further to the answer by Lord Wolfson of Tredegar on 14 June concerning recent acquittals in the case of perverting the Court of Justice in relation to the Hillsborough disaster (HL Deb, cols 1668–71), what discussions they have had with the Director of Public Prosecutions (DPP) as to why the decision of the Court was not appealed; whether the DPP gave advice on the decision not to appeal; and whether the DPP intends to publish the advice not to appeal.

Answering member: Lord Stewart of Dirleton | **Department:** Attorney General

The decision not to pursue an appeal in these cases was made by the CPS team managing the original prosecution after seeking advice from senior counsel. Prosecution decisions are made independently from Government. The Director of Public Prosecutions did not provide advice on these cases.

To bring an appeal, the prosecution would have to be able to show that the Judge's decision was wrong in law, that he had made an error about the facts or that his decision was otherwise unreasonable. After careful consideration, especially for the families involved, the CPS concluded that it could not meet this test.

On 26 May 2021, the CPS issued a public statement on this ruling and has confirmed publicly that the decision not to appeal was based on the conclusion that the legal test was not met.

29 Jun 2021 | Written questions | Answered | House of Lords | HL1146

Date tabled: 16 Jun 2021 | Date for answer: 30 Jun 2021 | Date answered: 29 Jun 2021

[Engagements](#)

Asked by: Mrs Theresa May (Maidenhead) (Con)

In April 1989, 96 Liverpool fans were unlawfully killed at Hillsborough, yet nobody has been successfully prosecuted for their part in those unlawful killings. The most recent trial collapsed, because although it was accepted that police evidence had been altered, as it was evidence to a public inquiry, it did not constitute perversion of the course of justice. Will my right hon. Friend urgently look at the ramifications of that judgment for current and future public inquiries, and ensure that people are given the justice that has been so cruelly denied to the families of the Hillsborough 96?

Answered by: The Prime Minister | **Department:** Prime Minister

I thank my right hon. Friend for her question. Of course, the families of the 96 who died in the Hillsborough disaster and those who were injured have shown tremendous courage and determination. My right hon. Friend raises a particular issue about the recent court case and asks for a review of the law. I can give her the reassurance that we will always consider opportunities to review the law and how it operates if necessary, and we will certainly be looking at the case she describes.

09 Jun 2021 | Prime Minister's questions - Supplementary | Answered | House of Commons | 696 c955

Date answered: 09 Jun 2021

[Bereavement after a Public Disaster](#)

Asked by: Maria Eagle

I thank the Minister for that answer. He will know that under the ten-minute rule procedure in this House, I have introduced the Public Advocate Bill, which is informed by the experience of more than 30 years of campaigning by the Hillsborough families and survivors, and that Lord Michael Wills has introduced it in the other place. Next time the Minister gets a chance to speak to the Lord Chancellor, will he ask him if he will meet Lord Wills and me to see whether the proposals on which the Government have consulted can be strengthened to ensure that they meet the needs of those bereaved by public disasters, because thousands more of our fellow citizens could now benefit from us getting these provisions right?

Answered by: Alex Chalk | **Department:** Justice

I thank the hon. Lady for her question and pay tribute to her for the campaigning that she has done on this issue. I had the opportunity to speak to my right hon. and learned Friend the Lord Chancellor just a few seconds ago; he will be happy to have the meeting that she requests.

09 Jun 2020 | Oral questions - 1st Supplementary | Answered | House of Commons | 677 c147

Date answered: 09 Jun 2020

[Disasters](#)

Asked by: Esterson, Bill

To ask the Secretary of State for Justice, if he plans to bring forward legislative proposals to establish an independent public advocate.

Answering member: Wendy Morton | **Department:** Ministry of Justice

The Government is committed to supporting bereaved families after public disasters and during public inquests.

We have consulted on proposals to establish an independent public advocate and will publish a response in due course.

16 Jan 2020 | Written questions | Answered | House of Commons | 2529

Date tabled: 13 Jan 2020 | Date for answer: 16 Jan 2020 | Date answered: 16 Jan 2020

[Public Authority \(Accountability\) Bill](#)

Asked by: Eagle, Maria

To ask the Secretary of State for the Home Department, if he will take steps to introduce the provisions set out in the Public Authority (Accountability) Bill recommended by the Rt Rev James Jones KBE in his report, The patronising disposition of unaccountable power: a report to ensure the pain and suffering of the Hillsborough families is not repeated, published on 1 November 2017, HC 511; and if he will make a statement.

Answering member: Mr Nick Hurd | Department: Home Office

Rt Rev James Jones KBE's 2017 report recommended that consideration be given to the Public Authority (Accountability) Bill "once the Law Commission's work on Misconduct in Public Office is complete, and government has agreed the detail of the reform the Commission sets out".

The Law Commission's work is currently on-going. Once the review of Misconduct in Public Office is complete, Government will consider and respond to the Law Commission's conclusions. The Government will also provide a full response to the 2017 report in due course, following the conclusion of the ongoing criminal proceedings.

29 Apr 2019 | Written questions | Answered | House of Commons | 246938

Date tabled: 24 Apr 2019 | Date for answer: 29 Apr 2019 | Date answered: 29 Apr 2019

[Topical Questions](#)

Asked by: Alison McGovern (Wirral South) (Lab)

Next week will be the six-month anniversary of the publication of the report by Bishop James Jones into the experience of the Hillsborough families. The report contains many recommendations that relate to the work of the Ministry of Justice. Will the Secretary of State explain when we will see action from the Government on those recommendations?

Answered by: Lucy Frazer | Department: Justice

The position in relation to inquests and legal aid funding, as the hon. Lady may or may not know, is running alongside our legal aid review. I hope to be able to assure her that those matters are being looked at.

24 Apr 2018 | Topical questions - Supplementary | Answered | House of Commons | 639 c735

Date answered: 24 Apr 2018

[Hillsborough Families' Experiences Review](#)

Asked by: Williams, Hywel

To ask the Secretary of State for the Home Department, what plans she has to implement the recommendations set out in the report, The patronising disposition of unaccountable power, by Right Rev James Jones on the Hillsborough disaster.

Answering member: Mr Nick Hurd | Department: Home Office

The points of learning made by Bishop James Jones in his report span a number of government departments and organisations who are considering their respective responses. The Home Office is coordinating those responses and the Government will therefore provide a full response in due course. In

doing so we must be mindful that nothing is done which might prejudice the ongoing criminal proceedings.

With those proceedings underway, it is important that the Hillsborough families continue receiving support and arrangements are in place to allow this to be maintained.

The Crown Prosecution Service will keep the families informed regarding developments with trials and court hearings. Hillsborough families will also be entitled to support offered by the Government-funded court-based Witness Service, which provides emotional and practical support, advice and information, regardless of whether or not they are witnesses.

01 Mar 2018 | Written questions | Answered | House of Commons | 129394

Date tabled: 23 Feb 2018 | Date for answer: 27 Feb 2018 | Date answered: 01 Mar 2018

[Engagements](#)

Asked by: Alison McGovern (Wirral South) (Lab)

An hour ago, the Government published a report by the Right Reverend James Jones, “The Patronising Disposition of Unaccountable Power”, which the Prime Minister commissioned to ensure that the pain and suffering of the Hillsborough families is not repeated. Given what we have heard in this session and given the events surrounding the Grenfell Tower disaster, I worry that the pain and suffering of the Hillsborough families is already being repeated. Will the Prime Minister commit her Government to supporting both a duty of candour for all public officials and, as the report requires, an end to public bodies spending limitless sums to provide themselves with representation which surpasses that available to families?

Answered by: The Prime Minister | **Department:** Prime Minister

Obviously, the House will appreciate that I have to be careful about what I say in relation to Hillsborough because of ongoing criminal proceedings, but I want to pay tribute to the work of Bishop James Jones throughout: in chairing the independent panel, as my adviser on this issue and with the family forums. He has done an excellent job once again. His report into the experiences of the Hillsborough families, which has been published today, as the hon. Lady says, is important. The Government will need to look very carefully at the, I think, 25 points of learning that come out of it and we will want to do so. I have always been very clear that the experience of the Hillsborough families should not be repeated. That is why we have looked at and are committed to the concept of the public advocate. We want to ensure that people have the support they need and it is important that we learn the lessons of Hillsborough. As she knows, I was involved in making the decision

that enabled the Hillsborough families to have legal support on a basis that I felt was fair in relation to the other parties involved in that inquest. I assure her that we will not forget the Hillsborough families, who have been dignified throughout the many years they have been waiting for justice. We will not forget them, we will not forget their experience and we will ensure that we learn from it to improve the experience of others in the future.

01 Nov 2017 | Prime Minister's questions - Supplementary | Answered | House of Commons | 630 c821

Date answered: 01 Nov 2017

[Topical Questions](#)

Asked by: Ellie Reeves (Lewisham West and Penge) (Lab)

The recently published Bach commission report highlighted a number of serious issues relating to access to justice, including representation at inquests. In the light of tragic events such as Grenfell Tower and Hillsborough, will the Minister commit to providing legal aid for inquests in all cases when the state is funding one or more of the other parties?

Answered by: Dominic Raab | Department: Justice

I thank the hon. Lady for her question on this pertinent and salient point. Legal aid remains available for inquests through the exceptional case funding scheme. Although those decisions are obviously decided independently, I reassure her that more than half the applications in relation to inquest cases in 2016-17 were granted.

31 Oct 2017 | Topical questions - Supplementary | Answered | House of Commons | 630 c701

Date answered: 31 Oct 2017

[Public Disasters: Independent Advocate](#)

Asked by: Nick Thomas-Symonds (Torfaen) (Lab)

I am sure the Solicitor General would agree that it is vital that the independent public advocate has the powers needed to carry out the role. I pay great tribute to the work of the Hillsborough families over many years, but he will be aware that key to that were the findings of an independent panel in overturning the first inquest verdict. Will the independent public advocate have the powers to appoint an independent panel if they see fit to do so?

Answered by: The Solicitor General | **Department:** Attorney General

The hon. Gentleman raises a very germane point, and we all need to bear the Hillsborough precedent very much in mind. I am keen, and the Government are keen, to ensure that the independent advocate has as powerful and as meaningful a role as possible. Each case will depend on its merits, but I am certainly prepared to look at all details, including the one he raises.

29 Jun 2017 | Oral questions - Supplementary | Answered | House of Commons | 626 c733

Date answered: 29 Jun 2017

[Legal Aid Scheme: Grenfell Tower](#)

Asked by: Phillips, Jess

To ask the Secretary of State for Justice, pursuant to the Prime Minister's oral contribution of 22 June 2017, Official Report, column 168, on legal aid being available to families affected by the Grenfell Tower fire, how that aid will be distributed; and what steps his Department is taking to ensure that those people affected understand the legal aid process and have fair and independent access to legal representation.

Answering member: Dominic Raab | **Department:** Ministry of Justice

The Government has announced that it will meet the costs of providing victims with legal representation at the inquiry into the Grenfell Tower fire. There is provision for providing such funding under section 40 of the Inquiries Act 2005. This is not Legal Aid. Details of the funding and how victims can access it will be announced by the inquiry in due course.

In addition, Legal Aid may be available to cover certain legal costs that victims may face outside the inquiry, such as advice about being re-housed.

03 Jul 2017 | Written questions | Answered | House of Commons | 1535

Date tabled: 27 Jun 2017 | Date for answer: 03 Jul 2017 | Date answered: 03 Jul 2017

2.5

Committee Reports

[3rd Special Report - The Coroner Service: Government Response to the Committee's First Report, HC 675](#)

Justice Committee

10 September 2021

[First Report - The Coroner Service, HC 68](#)

Justice Committee

27 May 2021

3 Media articles

3.1 Press releases

[CPS statement on Hillsborough ruling](#)

Crown Prosecution Service

26 May 2021

[Press release: Bishop's review of Hillsborough families' experiences published](#)

Home Office

1 November 2017

3.2 Articles and blogs

[Bereaved families supported by new charter](#)

College of Policing

13 September 2021

[Means test to be removed for bereaved families in ECF cases](#)

Law Society Gazette,

10 September 2021

[Government announce crucial change in legal aid for inquests](#)

INQUEST

10 September 2021

[Hillsborough: Director of public prosecutions apologises for lack of 'justice and accountability'](#)

Independent

15 June 2021

[Justice Secretary in 'review law' pledge to Hillsborough families](#)

ITV News

10 June 2021

['Judicial' Hillsborough inquiry questionnaires cast doubt on trial ruling](#)

Guardian

03 June 2021

[Covid bereaved join call for 'Hillsborough law' to force duty of candour](#)

Guardian

28 May 2021

[After a 32-year battle for justice, what is Hillsborough's legacy?](#)

BBC

28 May 2021

[Hillsborough: anger from all sides as acquittal of trio ends 30 years of inquiries](#)

Times

27.05.2021

[Collapse of Hillsborough trial highlights need for new law](#)

Hudgell Solicitors

27 May 2021

[Lack of Hillsborough accountability is a scandal, says minister](#)

BBC

27 May 2021

[Hillsborough: why has the trial collapsed and what happens next?](#)

Guardian

26 May 2021

[Hillsborough trial: Timeline of 30-year battle for justice](#)

Independent

26 May 2021

[The Victims' Commissioner calls for legal aid for inquests in letter to Lord Chancellor](#)

Victims Commissioner

22 April 2021

[Inquests 'more adversarial than criminal cases', says Grenfell QC](#)

Law Society Gazette

26 August 2020

[The long fight for Hillsborough justice is not over](#)

Guardian

18 December 2019

[Victims of major disasters like Hillsborough and Grenfell to receive extra support under new strategy](#)

Independent

10 September 2018

[The Guardian view on the Grenfell inquiry: cultural change and procedural model](#)

Guardian

31 May 2018

[New 'Hillsborough Law' needed to tackle 'burning injustice' and empower victims and family](#)

The Conversation

02 November 2017

[Don't let the Grenfell victims suffer the legal nightmare of Hillsborough](#)

Guardian

28 June 2017

[The Grenfell Tower inquiry: learning from Hillsborough](#)

The Conversation

22 June 2017

4

Further Reading

[Daniel Morgan Independent Panel report](#)

Home Office

June 2021

[R -v- Metcalf Denton Foster](#)

Courts and Tribunals Judiciary

26 May 2021

[Simon Gardiner, et al, “Integrity in Public Life: Reflections on a Duty of](#)

[Candour”](#), Public Integrity, 10 May 2021

[Misconduct in public office: summary](#)

Law Commission

December 2020

[When Things Go Wrong: the response of the justice system](#)

JUSTICE

August 2020

[Now or Never! Legal aid for inquests](#)

INQUEST

February 2019

[Family Reflections on Grenfell: No Voice Left Unheard](#)

INQUEST

10 May 2019

[Establishing an Independent Public Advocate](#)

Ministry of Justice

2018

[Independent Public Advocate consultation response](#)

JUSTICE

December 2018

[Consultation on the Independent Public Advocate: Response from the Mayor of London](#)

The Mayor of London

2018

[Bar Council response to the Independent Public Advocate consultation Paper](#)

Bar Council

3 December 2018

[Consultation on establishing an Independent Public Advocate \(IPA\)](#)

Independent Office for Police Conduct (IOPC)

December 2018

[Consultation on the role of the Independent Public Advocate: A response by the Association of Personal Injury Lawyers](#)

APIL

November 2018

[Victims Strategy](#)

Ministry of Justice

10 September 2018

[Hillsborough investigation](#)

Independent Office for Police Conduct

07 January 2018

[Queen's Speech 2017](#)

Cabinet Office and Prime Minister's Office, 10 Downing Street

21 June 2017

[Hillsborough stadium disaster: lessons that must be learnt](#)

Home Office

1 November 2017

Report by the Right Reverend James Jones on 'the patronising disposition of unaccountable power'.

[Determinations and findings of the Hillsborough inquests](#)

Home Office

27 April 2016

Home Secretary Theresa May gives a statement on the findings of the Hillsborough inquests.

[Hillsborough: The Report of the Hillsborough Independent Panel](#)

Hillsborough Independent Panel

September 2012

[Lord Taylor's final report on the Hillsborough stadium disaster](#)

Her Majesty's Stationery Office.

January 1990.

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