



Library Note

Ministerial Collective Responsibility and Agreement to Differ: Recent Developments

The principle of collective responsibility is set out in both the [Ministerial Code](#) and the [Cabinet Manual](#) and requires ministers to present a unified front in regard to decisions made by government. As part of this convention, ministers are able to express their views confidentially within government while supporting in public and in Parliament the decisions agreed by government. The Cabinet Manual states any minister who cannot accept government decisions “is expected to resign”. However, an exception to this rule can exist “where collective agreement is expressly set aside”.

An exception to the normal rules regarding Cabinet collective agreement has been agreed further to the 23 June 2016 referendum on the UK’s membership of the European Union. [The stated intention of this ‘agreement to differ’](#) was to allow for there to be a clear government position on the UK’s membership of the EU while at the same time allowing individual ministers to take different personal positions.

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

- On the issue of 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.

In 2016, the Government stated that, while ministers may hold their own views on the referendum, the role of the civil service should be to support the settled government position. The Cabinet Secretary and Head of the Civil Service, Sir Jeremy Heywood, issued [guidance to civil servants on 23 February 2016](#). This [guidance has been criticised by ministers](#) opposed to the Government’s position regarding the referendum question, on the basis that it would lead to the withholding of documents by departmental civil servants from their Secretary of State.

This House of Lords Library briefing provides background information regarding the principle of collective responsibility in government. It also provides a comparison of the agreements to differ in place regarding the 1975 referendum on the UK’s membership of the EEC and the 2016 EU referendum.

I. Collective Responsibility

The Ministerial Code states that the “principle of collective responsibility applies to all government ministers”.¹ This principle dictates:

[...] 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 origins of collective responsibility can be traced back to the 18th century when ministers sought to exert their independence from the Crown by submitting collectively agreed advice to the monarch and to prevent individual ministers from being singled out if the monarch did not approve of a particular policy.³ The principle of collective responsibility applies not only for the UK Government but has also been applied in devolved governments.⁴

The House of Lords Constitution Committee, in its 2014 report [Constitutional Implications of Coalition Government](#), described there being two sides to the convention on collective responsibility: that government policy is developed collectively by ministers and that, once a decision is reached, it is binding on and supported by all ministers.⁵ One of the main benefits of the convention identified by the Committee was that collectively agreed decisions made it more likely that better decisions would be reached. The Committee also argued that requiring ministers to speak for the whole of government when appearing before Parliament facilitated a greater level of accountability.⁶ A series of ancillary benefits were also identified, including that: the Government can avoid accusations of being publically divided; the civil service are able to implement government policy in the knowledge that only a collective decision would reverse that policy; and that the monarch is able act on ministerial advice in the knowledge that it was the collective view of the Government.⁷

Agreements to Differ

The Cabinet Manual states that any minister who cannot accept decisions made at Cabinet and Cabinet committee level is expected to resign.⁸ However, an exception to this applies “where collective agreement is expressly set aside”.⁹ This is referred to as an ‘agreement to differ’. In the past, such exceptions have been allowed for limited periods and under certain rules agreed by the Government.

¹ Cabinet Office, [Ministerial Code](#), October 2015, p 1.

² *ibid*, p 2, para 2.1. Further guidance on collective responsibility is set out in paras 2.3–2.4 of the Ministerial Code.

³ House of Commons Library, [Collective Responsibility of Ministers](#), 15 November 2004, pp 7–8.

⁴ For further information on the development of collective responsibility in Scotland and Wales, see Peter Lynch, ‘[Governing Devolution: Understanding the Office of First Ministers in Scotland and Wales](#)’, *Parliamentary Affairs*, 2006, vol 59, no 2, pp 1–17.

⁵ House of Lords Constitution Committee, [Constitutional Implications of Coalition Government](#), 12 February 2014, HL Paper 130 of session 2013–14, p 21.

⁶ *ibid*, pp 22–3.

⁷ *ibid*.

⁸ Cabinet Office, [The Cabinet Manual](#), October 2011, p 4.

⁹ *ibid*.

2. 2016 EU Referendum

A referendum on whether the UK should remain part of the European Union is to take place on 23 June 2016.¹⁰ The position of the UK Government is to recommend that Britain remains part of the EU, following the agreement of changes to the status of the UK in the EU, negotiated by the Prime Minister, David Cameron, with European Council counterparts in February 2016. This position to support a vote to remain in the EU was agreed during a weekend meeting of the Cabinet on 20 February 2016.¹¹ The Prime Minister had previously stated in the House of Commons on 5 January 2016 that it was his intention that there would be a “clear Government position” on the referendum but that “it [would] be open to individual ministers to take a different personal position while remaining part of the Government”.¹²

2.1 Guidance to Ministers

The Prime Minister set out in a letter to ministerial colleagues in January 2016 what the agreement to differ would mean in practice, based on the advice of the Cabinet Secretary.¹³ This letter described the arrangement as being “wholly exceptional” and applying only to whether the UK should remain in or leave the EU. In Parliament, ministers would speak from the front bench and support government policy.¹⁴ Although they 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”. Hence, the letter stated ministers would not be expected to contradict the Government’s position on EU membership while otherwise defending government policy in Parliament.

2.2 Guidance to Civil Servants

In his letter to ministers, the Prime Minister stated that it would not be appropriate for civil servants to provide briefings and speech material on the issue of the UK’s continued membership of the EU to ministers who differed from the Government’s agreed position.¹⁵ Ministers would be able to draw on the help and advice of special advisors before the beginning of the 28 day campaign period but only so long as they did not draw on official and departmental resources, and that this was done in line with that special advisor’s wishes and in their own time.¹⁶

The Cabinet Secretary and Head of the Civil Service, Sir Jeremy Heywood, published guidance to civil servants and special advisors regarding how they should conduct themselves in the period prior to the 28 day campaign.¹⁷ The “key principles” of this guidance were that, while ministers would be able to hold their own views regarding the referendum, civil servants should support the Government’s policy—as required by the Civil Service Code—and that ministers

¹⁰ Statutory instruments to establish the date of the referendum, laid on 22 February 2016, were approved in the House of Lords on 2 March 2016 and approved in the House of Commons on 29 February 2016: [HL Hansard, 2 March 2016, cols 829–932](#) and [HC Hansard, 22 February 2016, col 115](#).

¹¹ [HC Hansard, 22 February 2016, col 24](#).

¹² [HC Hansard, 5 January 2016, cols 26–8](#)

¹³ Office of the Prime Minister, ‘[Letter by the Prime Minister to Ministerial Colleagues: EU Referendum](#)’, 11 January 2016.

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ Letter from Head of the Civil Service: ‘[EU Referendum: Guidance for the Civil Service and Special Advisers](#)’, 23 February 2016.

should abide by the Ministerial Code and not ask civil servants to act in a way that would conflict with the Civil Service Code.¹⁸ Separate rules, as dictated by the [Political Parties, Elections and Referendums Act 2000](#), would apply for civil servants during the 28 day campaign period. The guidance included the following on the provision of support by civil servants, including briefing and speech material:

As set out in the Prime Minister’s letter [of 11 January 2016] 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. This includes 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 will apply also to their special advisers.¹⁹

2.3 Debate over the Role of the Civil Service

The guidance issued by the Head of the Civil Service was criticised by ministers campaigning to leave the EU. On 24 February 2016, the Minister of State for Employment, Priti Patel, issued a statement, published on the website of the campaign organisation Vote Leave, in which she described the guidance as “unconstitutional”, arguing that Secretaries of State would be prevented from being made aware of the information they needed to fulfil their duties.²⁰

On 29 February 2016, the chair of the House of Commons Public Administration and Constitutional Affairs Committee, Bernard Jenkin, asked an urgent question in the House of Commons on this guidance.²¹ Mr Jenkin argued that there was a lack of clarity arising from the guidance, including the [internal ‘Question and Answer’ guidance provided to civil servants](#).²² He also argued that withholding of documents by civil servants was in conflict with the requirement that ministers were accountable for their departments. In his response, the Minister for the Cabinet Office, Matthew Hancock, argued that the policy had been agreed by the Cabinet, and that the guidance was consistent with the Civil Service Code.²³ Mr Hancock summarised the Government’s position on the role of the civil service as follows:

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.²⁴

On 1 March 2016, Sir Jeremy Heywood gave evidence to the House of Commons Public Administration and Constitutional Affairs Committee, following a request that he answer

¹⁸ Letter from Head of the Civil Service: [‘EU Referendum: Guidance for the Civil Service and Special Advisers’](#), 23 February 2016, pp 1–2.

¹⁹ *ibid.*, p 2.

²⁰ Vote Leave, [‘Patel: Heywood’s Unconstitutional Act Threatens the Reputation of the Civil Service’](#), 29 February 2016.

²¹ [HC Hansard, 29 February 2016, cols 691–705.](#)

²² HM Government, [Q&A: EU Referendum Guidance to Civil Servants](#), 2016.

²³ [ibid.](#), cols 692–3.

²⁴ [ibid.](#), col 691.

questions regarding the EU referendum and his guidance to the civil service.²⁵ Sir Jeremy said that the 2016 guidance to civil servants was similar to that issued in 1975. He said that the Government would not “deny ministers the information they [needed] to run their departments” and said that “pure facts” and statistics would not be withheld from ministers.²⁶ He described the intention of the policy as being 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.²⁷ Following the evidence session, Bernard Jenkin stated to the press that he was “reassured” by this evidence but recommended that the guidance be reissued to clarify the position.²⁸

3. Previous Examples of Agreements to Differ

Previous examples of where exceptions to the rules of collective responsibility have been officially agreed are:

- In 1932, Liberal ministers in the National Government were allowed to differ from the Government’s policy on tariff reform.²⁹
- An agreement to differ existed regarding the referendum on the UK’s membership of the EEC in 1975.
- In 1977, an agreement to differ was reached over the introduction of direct elections for UK members of the European Assembly, the precursor to the European Parliament, and on the method for their election.³⁰
- During the 2010–15 parliament, the Coalition Government, made up of both Conservative and Liberal Democrat ministers, sought to maintain collective responsibility while at the same time agreeing a number of issues, set out in the [2010 Coalition Agreement](#), on which the two parties were able to adopt different positions. The agreement included that both parties could take differing positions regarding the referendum on whether to introduce the alternative vote system for UK general elections.³¹ There was also a departure from collective responsibility on issues outside this agreed list, including, in 2013, the support by Liberal Democrat members of the Government for a delay to a review of parliamentary constituency boundaries in a House of Commons division.³²

3.1 1975 Referendum on EEC Membership

During the Labour Government of 1974–79, an agreement to differ was reached on the issue of the 5 June 1975 referendum on whether the UK should remain a member of the European Economic Community (EEC). This situation is similar to that of the 2016 EU referendum in

²⁵ House of Commons Public Administration and Constitutional Affairs Committee, [Oral Evidence: EU Referendum: Civil Service Guidance](#), 1 March 2016, HC 792 of session 2015–16.

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ BBC, [‘Bernard Jenkin “Reassured” After Grilling Civil Service Boss Sir Jeremy Heywood](#)’, 1 March 2016.

²⁹ House of Commons Library, [Collective Responsibility of Ministers](#), 15 November 2004, pp 25–7.

³⁰ *ibid.*, pp 31–33.

³¹ House of Lords Constitution Committee, [Constitutional Implications of Coalition Government](#), 12 February 2014, HL Paper 130 of session 2013–14, p 23.

³² *ibid.*, pp 23–6.

certain respects. In both 1975 and 2016, an agreement to differ was reached following the election of a party with a majority of MPs in the House of Commons. In 1974, Labour's majority was three, compared to the majority of twelve achieved by the Conservatives in 2015. In both cases, the agreement to differ related to an issue that both Governments had committed themselves to holding a referendum on in their manifestos. However, unlike the 2016 EU referendum, in 1975 the legislation establishing the referendum was introduced and passed subsequent to the Prime Minister's negotiations with European counterparts.

Conduct of Ministers

Following the agreement of a deal with EEC counterparts in December 1974, the then Prime Minister, Harold Wilson, told the House of Commons in January 1975 of his intention to hold a referendum. In his statement, Mr Wilson said that, once the Government had announced its recommendation regarding the referendum decision, ministers would be "free to support and speak in favour of a different conclusion in the referendum campaign".³³ Following agreement of the new terms of the UK's EEC membership by the Cabinet on 18 March 1975, the Prime Minister stated that he would recommend that the electorate should vote in the referendum for the UK to remain in the EEC.³⁴

Of the 23 members of Mr Wilson's Cabinet, seven did not support the Government's position.³⁵ In April 1975, the Prime Minister issued a written statement setting out Cabinet approved guidelines regarding how the agreement to differ would operate.³⁶ This stated that the freedom provided to ministers did not extend to parliamentary proceedings or official business. Ministers responsible for European aspects of government business were to state the Government's position and were not to be "drawn into making points against the Government recommendation". The guidance also covered how ministers were to conduct themselves while campaigning, stating that they should "avoid personalising or trivialising the argument and not to allow themselves to appear in direct confrontation". This bar on direct confrontation extended to ministers appearing on television and other media. As noted by the current Minister for the Cabinet Office, Matthew Hancock, the terms of the 2016 agreement included no such ban on ministers appearing on radio or TV.³⁷

There was one instance of a minister having to leave office following a breach of this guidance. On 9 April 1975, the Minister of State for Industry, Eric Heffer, spoke in the House of Commons against the Government's position during a debate on the result of the EEC negotiations, arguing that he was speaking in his capacity as a constituency MP rather than as a minister. This resulted in the minister being dismissed.³⁸ There were no further dismissals of ministers during the referendum campaign.

While ministers opposed to the UK's continued membership of the EEC continued to speak in Parliament for the Government, there was some variation from the norms of collective responsibility. Tony Benn, in his role as Minister of State for Posts and Telecommunications and then subsequently as Secretary of State for Industry, and the Secretary of State for Trade, Peter

³³ House of Commons Library, [Collective Responsibility of Ministers](#), 15 November 2004, pp 28–9; [HC Hansard, 23 January 1975, col 1746](#).

³⁴ House of Commons Library, [The 1974–75 UK Renegotiation of EEC Membership and Referendum](#), 13 July 2015, pp 11 and 18.

³⁵ *ibid*, p 22.

³⁶ *ibid*, p 28; [HC Hansard, 7 April 1975, col 351W](#).

³⁷ [HC Hansard, 29 February 2016, cols 692](#).

³⁸ D Butler and U Kitzinger, *The 1975 Referendum*, 1996, p 53.

Shore, both made reference in the House of Commons to retaining their own view on the referendum question while at the same time speaking for the Government. Mr Benn referred to “the views of the Government on the issue” in response to questions relating to the referendum while speaking from the dispatch box, rather than deferring to another minister to respond on the Government’s behalf, as had been recommended in the Government’s guidance.³⁹ The rule against direct confrontation by ministers was modified on 23 May 1975.⁴⁰ This allowed ministers to debate each other on television, including a debate between the then Home Secretary, Roy Jenkins, and Tony Benn, broadcast on 2 June 1975 on the BBC’s *Panorama* programme.

The Operation of Government and the Role of the Civil Service

Peter Riddell, director of the Institute for Government, has identified the main differences regarding the role of civil servants in the 2016 campaign compared to 1975. These are the regulation of their 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 1975.⁴¹ Sir Jeremy Heywood, in his evidence to the House of Commons Public Administration and Constitutional Affairs Committee on 1 March 2016, described his guidance to civil servants as being similar to the 1975 guidance “in material respects” but with the addition of minor changes in relation to special advisors.⁴²

In their analysis of the 1975 referendum, David Butler and Uwe Kitzinger described the work of government as operating “more smoothly than expected” during the agreement to differ, with there being “remarkably few [...] lapses into public ministerial infighting”.⁴³ Peter Riddell described there being “minor squalls” in 1975, when dissenting ministers distanced themselves from the Government’s position, noting that Harold Wilson described the television debate between Roy Jenkins and Tony Benn as being a “public brawl”.⁴⁴ Mr Riddell argued that the example of the 1975 referendum showed that exceptions from the principle of collective responsibility “need not prevent a government from functioning—though there tend to be lasting political scars”. Mr Riddell described the handling of a breach of collective responsibility successfully as relying more on the behaviour of ministers “during the heat of the campaign”, than on the formal guidance issued by government.

4. Further Reading

Books

- David Butler and Uwe Kitzinger, *The 1975 Referendum*, 1996
- Geoffrey Marshall, *Ministerial Responsibility*, 1989
- Rodney Brazier, *Ministers of the Crown*, 1997

³⁹ [HC Hansard, 21 April 1975, cols 973](#); see also House of Commons Library, [Collective Responsibility of Ministers](#), 15 November 2004, p 30.

⁴⁰ D Butler and U Kitzinger, *The 1975 Referendum*, 1996, pp 164 and 204.

⁴¹ *ibid.*

⁴² House of Commons Public Administration and Constitutional Affairs Committee, [Oral Evidence: EU Referendum: Civil Service Guidance](#), 1 March 2016, HC 792 of session 2015–16.

⁴³ D Butler and U Kitzinger, *The 1975 Referendum*, 1996, p 53.

⁴⁴ Peter Riddell, [‘Government and the EU Referendum’](#), Institute for Government, 19 February 2016.

Parliamentary Publications

- House of Commons Library, [Collective Responsibility of Ministers](#), 15 November 2004
- House of Commons Library, [European Union Referendum Bill 2015–16](#), 3 June 2015, pp 28–30.
- House of Commons Library, [The 1974–75 UK Renegotiation of EEC Membership and Referendum](#), 13 July 2015
- House of Commons Library, [The Individual Responsibility of Ministers: An Outline of the Issues](#), 21 February 1996
- House of Lords Constitution Committee, [Constitutional Implications of Coalition Government](#), 12 February 2014, HL Paper 130 of session 2013–14, pp 21–31.

Press Comment

- Isabel Hardman, '[Cameron's Concession on Cabinet Meeting Will Calm Eurosceptic Tensions](#)', *Spectator*, 15 February 2016
- James Landale, '[EU Referendum: How will Divided Government Work?](#)', BBC News, 22 February 2016

Think Tanks

- Peter Riddell, '[Government and the EU Referendum](#)', Institute for Government, 19 February 2016
- Catherine Haddon, '[Collective Cabinet Responsibility and the EU Referendum](#)', Institute for Government, 13 January 2016

Journal Articles

- Chris Brady, '[Collective Responsibility of the Cabinet: An Ethical, Constitutional or Managerial Tool?](#)', *Parliamentary Affairs*, 1999, vol 52, no 2, pp 214–29
- Peter Lynch, '[Governing Devolution: Understanding the Office of First Ministers in Scotland and Wales](#)', *Parliamentary Affairs*, 2006, vol 59, no 2, pp 1–17

House of Lords Library Notes are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, politically balanced briefing on subjects likely to be of interest to Members of the Lords. Authors are available to discuss the contents of the Notes with the Members and their staff but cannot advise members of the general public.

Any comments on Library Notes should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to purvism@parliament.uk.