

Crown Agents Bill

[HC Bill 118 1994/95]

[HL Bill 34 1994/95]

Research Paper 95/68

31 May 1995



The main purpose of the Bill is to provide for the vesting of the property, rights and liabilities of the Crown Agents for Overseas Government and Administration ("Crown Agents") in a company nominated by the Secretary of State; and provides for securities in the successor company to be issued. In short, the Bill provides for the transfer of the Crown Agents business to a successor company under the Companies Act, wholly owned by the Crown and therefore in the public sector. The Bill also gives the Secretary of State, with the consent of the Treasury, the power to dispose of the successor company to a new owner; essentially privatising the business.

The Crown Agents Bill [HC Bill 118] was first considered by the Lords as HL 34. The Second Reading in the Commons is planned for 6 June 1995. This Paper presents some background material to the Bill. The Second Reading debate in the Lords took place on 28 February 1995. The Committee Stage was on 23 March 1995 and the Report Stage was a month later on 24 April 1995. The Bill's Third Reading was on the 4 May 1995, the same day as the Bill's First Reading in the Commons.

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I Introduction

A. Activities

The Crown Agents were established in the 19th Century [1833] as the Crown Agents for the Colonies. Their main function was to procure supplies for colonial governments and later for public authorities in the colonies, but as demands arose they extended their services to include stamp issues, marine insurance, inspection facilities, and recruitment and other personal services. Some of the services which the Crown Agents provided for their principals were financial. They floated loans for colonial governments and managed the investment of funds.¹

Although the modern Crown Agents provide a range of services, procurement remains the "engine-room" of their operations. Essentially, the Crown Agents advise their clients on the cheapest and most efficient way of supplying projects. The Crown Agents have been so successful over the years that they have become one of the world's largest international public sector purchasing organisations. They provide procurement, management and technical services to around 150 clients, serving 130 countries. Their work is obviously less colonially-based than before but their experience throughout many countries is still highly valued. They employ about 600 permanent staff - mainly in Sutton and central London - plus 250 overseas and contract staff.

The Crown Agents play an important role in helping the British Overseas Development Administration (ODA) to implement its bilateral aid programme. Although they are a key element in the UK's aid programme, their client list also includes other bilateral aid donors such as Japan and the Netherlands and multilateral agencies, in particular the World Bank, the European Union and the United Nations. The work of the Crown Agents has undergone changes in recent years, not least in developing its activities in eastern Europe and the former Soviet Union. The Crown Agents have also played an important role on behalf of Britain and other donors in ensuring the safe delivery of emergency aid in Bosnia and Rwanda.² Other examples taken from the 1994 Annual Report of the Crown Agents are given below and in annex one (*client in brackets*):

Russia

Continued to work alongside the Russian government in managing a \$350 million Import Rehabilitation Loan to improve the agriculture, health, transport and coal sectors (*ODA*)

Sierra Leone

¹ Report of the Tribunal appointed to inquire into certain issues arising out of the operations of the Crown Agents, HC 149 1981/82

² Source: Crown Agents news release 16 November 1994

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Provided specialist to the central statistics office (United Nations Development Programme)

Slovenia

Established a project coordination unit for regional customs programmes for all eleven PHARE beneficiary countries (*European Commission*)

South Africa

Arranged and administered the secondment of entrepreneurs from Soweto to British companies (*ODA*)

Syria

Proposed methods of financing and implementing the modernisation of the Commercial Bank and the Central Bank (*European Commission*)

Tanzania

Undertook a comprehensive review of public procurement and supply management arrangements (*World Bank*)

Thailand

Provided rubber-marketing expert to assist in mid-term project review (*European Commission*)

Vietnam

Enhanced the effectiveness and efficiency of the banking sector through a sustained programme of technical assistance and staff training (*Swedish International Development Authority, administered by the World Bank*)

Worldwide

Managed disbursement arrangements for 150 British bilateral aid agreements with total value of £1.8 billion (*ODA*)

Former Yugoslavia

Administered convoys delivering humanitarian aid, being responsible for recruitment, supplies, cargo movement, vehicles, vehicle workshops and logisticians involved in WHO and UNHCR operations (*ODA*)

Zambia

Provided an interim secretariat to assist the Revenue Board in establishing the Zambia Revenue Authority (*ODA*)

In his review of 1993 published in that year's Annual Report, Mr Peter Berry, the Managing Director of the Crown Agents, stated:

Increasingly, as aid becomes subject to a more detailed cost-benefit scrutiny than in previous cycles, we find ourselves able to demonstrate our effectiveness on several levels. Our cost effectiveness in the actual spending of aid is self evident. Yet we can also monitor the aid process, interfacing between donor and client to provide surety to each that their money is being well spent, and we can manage and train recipients to handle effectively and accountably the funds made available to them.

Our ambitions to help countries develop at the levels appropriate to each stage of growth have been tested and fulfilled in the emerging markets of Eastern Europe. Here opportunities have been presented for our financial and economic skills, and matched with an approach entirely appropriate to prevailing needs. We apply a consistent view of how a market economy may best grow and through advice, training and example, we achieve practical results as well as instilling the virtues of integrity, accountability and financial control.

And

Crown Agents is an international concern employing dedicated professionals in and from many nations. We all draw strength from our common objective to provide in the most cost effective manner and to the highest standards of honesty and integrity, development services to our clients. We greatly appreciate the support of these clients in over 130 countries and over 50 development agencies. They have increasingly invited us to contribute our practical experience to their counsels, an endorsement of the Crown Agents' social and developmental purpose of which we are proud.³

B. Past and Present Structure

Crown Agents were first appointed in 1833 as Crown Servants. In 1954 their full name was changed from Crown Agents for Colonies to Crown Agents for Overseas Governments and Administration, as they are still called. The Crown Agents were established as a statutory UK public sector corporation on 1 January 1980 by the Crown Agents Act 1979. This was the first time Crown Agents were given legal status as a public corporation, responsible to the Minister for Overseas Development and the Secretary of State for Foreign and Commonwealth Affairs with a capital structure reflecting the assets taken into the corporation. Under that Act the Secretary of State appoints the chairman and board and has certain powers of direction over the Crown Agents. One effect of the 1979 Act was that employees of the Crown Agents ceased to be civil servants. If Crown Agents is privatised in the next year or so, it will have spent only about 15 years of its 162 years as a public corporation.

C. Financial Results

The Crown Agents operate at no cost to the taxpayer. Since incorporation in 1979, the Crown Agents have not received any subsidies from HM Government. Indeed the Crown Agents have made payments of over £20 million in capital and interest to Government. The following extract from the Chairman's statement in the 1994 Annual Report and Accounts provides some of the financial background:

³ 1993 Annual Report

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Turnover at £58.2 million was appreciably higher than the £45.9 million achieved in 1993. The provision of services to non-UK clients, together with participation in humanitarian aid projects in former Yugoslavia and Rwanda, more than offset the continued decline in the traditional purchasing business for the British government's Overseas Development Administration (ODA).

After provision of £1.5 million (1993: £1.5 million) for the development of computer systems to meet the changing requirement of the Crown Agents' business, a profit before taxation of £835,000 was made compared with £275,000 in 1993. The balance sheet remains strong in relation to the current structure of the business. Maintaining that strength will be essential to ensure that the organisation can finance the growth of its non-traditional business and can meet the appropriate regulatory requirements.

The organisation remains committed to the highest standards of probity and integrity and to delivering effective and relevant services to its clients.

Several points are worth noting. First, there is the declining relative importance of the UK aid budget as a source of business for the Crown Agents. Second, after privatisation, any borrowings by the Crown Agents will not score against the PSBR. Although the ability to borrow outside the PSBR total may be an important factor in some privatisations, it is unlikely to be so in the case of the Crown Agents since they are not expected to engage in any substantial borrowings. Third, the only likely cash that will be raised for the UK government from the transfer into the private sector will be about £2 million in repayment of outstanding debt.⁴

Further financial results are set out in the following tables. Annex two notes the financial crisis which engulfed the Crown Agents in the mid 1970s and prompted a series of official inquiries.

⁴ See "Crown Agents welcome an independent role" *Financial Times* 26 August 1993

D. Crown Agents: five year financial summary

PROFIT AND LOSS FIVE YEAR SUMMARY					
	1994	1993	1992	1991	1990
	£'000	£'000	£'000	£'000	£'000
Turnover from Services:					
Advisory services	12,713	11,472	9,597	10,327	9,682
Financial services	9,000	9,167	8,899	8,114	8,010
Purchasing	11,421	9,841	10,781	12,914	15,017
Shipping	1,501	1,233	1,611	1,812	1,559
Security printing and sale of stamps	1,275	1,331	1,212	1,207	274
Supplies services	9,455	3,523	1,919	191	..
Reimbursable costs	12,801	9,366	3,104	1,641	1,789
	58,166	45,933	37,123	36,206	36,331
Expenses (including reimbursable costs)	(55,781)	(44,128)	(35,480)	(34,126)	(34,851)
Restructuring costs	(1,550)	(1,532)	(1,941)	(701)	450
Operating profit	835	273	-298	1,379	1,930
Profit from property	334
Profit on ordinary activities	835	273	36	1,379	1,930

BALANCE SHEET FIVE YEAR SUMMARY					
	1994	1993	1992	1991	1990
	£'000	£'000	£'000	£'000	£'000
Assets					
Money market deposits and securities	276,072	202,877	177,211	182,826	172,595
Other current assets	17,668	15,438	14,791	13,618	12,514
Tangible fixed assets	3,370	2,052	1,247	1,780	2,125
Investments	147	92	115	177	145
	297,257	220,459	193,364	198,401	187,379
Liabilities					
Principals' deposits	247,568	180,610	154,446	151,728	142,501
Other liabilities	33,600	24,054	23,224	31,104	29,784
Reserves	1,209	773	529	261	(356)
Commencing capital debt	1,996	2,138	2,281	2,424	2,566
Fixed capital	12,884	12,884	12,884	12,884	12,884
	297,257	220,459	193,364	198,401	188,091

Source: Crown Agents, Annual Report and Accounts, 1994

II Future Structure

The future status and role of the Crown Agents was thrown into question when the Overseas Aid Minister, Baroness Chalker, announced, on 15 December 1992⁵, that its status and role were to be reviewed. A lengthy study was then conducted into the Agents by Coopers & Lybrand. The results of the study have not been published, on grounds of commercial confidentiality. However, according to the original announcement, the report was to include advice on the feasibility of various options for the future of the Crown Agents, including retention in the public sector. Account was to be taken of the implications of any change for the Crown Agents' existing clients, including a wide range of international aid donors, the ODA and many overseas governments. The Government's plans for the Crown Agents were first set out in a letter from Baroness Chalker to the chairman of the Foreign Affairs Committee of the 13 August 1993. A copy is reproduced in annex 3.

A. Transfer of the Crown Agents to a successor business and its disposal.

Under the Bill, the transfer of the Crown Agents to the private sector will be a unique privatisation. There will be no public share issue with its attendant publicity and no trade sale. Instead an independent foundation with social and developmental objectives will be established. The Crown Agents business will then be transferred to a successor business owned by the foundation. Thus a two tier structure will be established, with the foundation acting as a holding company of the operating business. The operating business will be limited by guarantee. *The Financial Times*⁶ described the proposals in the following terms:

The privatisation will create a structure similar to the Wellcome Foundation, the health insurance groups PPP and Bupa, the motoring organisations the AA and the RAC and the British Standards Institute. An official at the Overseas Development Administration, to which the Crown Agents answer, said it would be 'entirely commercial in its approach, and will be expected to make a return', but profits will be ploughed back into the agency. It will answer to a board of directors, which will be selected from a cross-section of its users - including foreign aid agencies and exporters.

'By not exposing it to the pressures of shareholder interests, it will be able to act more easily in its own interests and in the interests of its clients in the developing world,' said the official.

If foundation were to be granted charitable status the directors of the holding company would also act as the charitable trustees.

⁵ HL Deb 15 December 1992 c.31WA

⁶ "Crown Agents welcome an independent role" *Financial Times* 26 August 1993

One aspect of the Bill that received much interest during the Bill's progress through the Lords was the lack of any detail concerning the disposal of the business and the future character of the foundation and the operating business. Although the Bill was presented as an enabling piece of legislation, the lack of detail on this point was criticised, especially by Lord Judd.⁷ Baroness Chalker recognised that the terms of the transfer to the successor business were not specifically addressed in the Bill.⁸ She told the House of Lords that:

The Government are presently considering proposals from the Board of Crown Agents for the structure of the foundation. We shall also need, once parliament has agreed the arrangements set out in the Bill, to settle the terms of the transfer to the operating company.

Relatedly, concern was also expressed in the Lords about the apparent lack of Parliamentary scrutiny of the precise terms of the transfer of the business to the successor business. Under the Bill, the transfer of the Crown Agents to the successor company would be accomplished by the Secretary of State. But as an amendment Lord Judd proposed that:

No order shall be made ...unless such an order has been laid before and approved by a resolution of both Houses Parliaments.

In Committee, Baroness Chalker explained that an affirmative resolution would be inappropriate because it would be "unprecedented" to act in such a way and that the introduction of an affirmative resolution "could be damaging to the commercial interests of Crown Agents". The inevitable delay caused by the need to obtain parliamentary approval could, according to Baroness Chalker, sow seeds of doubt and uncertainty about the Government's plans or the timing of the transfer, which would adversely affect Crown Agents.⁹

B. The Proposed New Structure

As noted above, the Bill itself does not set out precise details of the new structure of the business. However, Baroness Chalker told the Lords that the Government envisaged that the foundation would have the following features¹⁰:

⁷ For example, see HL 24 April 1995 c.767

⁸ HL Deb 28 February 1995 c.1410

⁹ HL Deb 24 April 1995 c.770

¹⁰ HL Deb 28 February 1995 cc1410-1411

- A two tier structure with the foundation being the sole owner of the operating company.¹¹
- The foundation will be a company limited by guarantee.¹²
- Foundation members will be able consider registering the foundation as a charity and other options open to companies limited by guarantee.
- Memorandum and articles of association to be tightly drawn up to reflect, and to build on the social, ethical and developmental principles on which Crown Agents' business is based, although these have yet to be published.
- The company will operate the Crown Agents' business along normal commercial lines and will be limited by shares.¹³
- The operating company will be able to pass its profits to the foundation.
- The foundation will not distribute dividends but will use any profits from the Crown Agents' business in pursuit of its overall objectives.
- Members of the foundation (some of whom may serve on the Board) will not be appointed by Ministers.
- Existing members of the Crown Agents may be among the founder members of the foundation.
- Founder members may be drawn from a range of institutions, including finance and trading companies, professional and trade organisations, charities and other developmental aid bodies.
- Additional new members will be nominated and selected by existing members in accordance with the foundation's articles of association.

¹¹ HL Deb 24 April 1995 c.764

¹² HL Deb 24 April 1995 c.765

¹³ HL Deb 24 April 1995 c.764

- The Secretary of State to have limited reserve powers (golden share) for a restricted period of up to 5 years, so that no change could be made to the fundamental purpose of the business.

During the Report stage in the Lords, Lord Judd expressed concern about the lack of clear detail on the constitutional aspects of the future organisation of the Crown Agents. After noting what Baroness Chalker had said during the progress of the Bill, Lord Judd went on to say:

But we on this side of the House remain deeply concerned about what the Minister did not say. She said only that the new owner was "likely" to take the form of a company limited by guarantee. She said that the terms of the transfer of the business were not a matter for Parliament but instead the members of the foundation will need to discuss and agree with the Government the terms of transfer of the business once Parliament has agreed to the arrangements set out in the Bill. She said that members of the foundation would not be appointed by Ministers but she failed to address the question of by whom they would be appointed and what would be the basis of legitimacy for such appointees.

In the same breath as asserting once again that what is intended will not amount to a trade sale, the Minister insisted that it was essential to ensure that full confidentiality for Crown Agents is maintained throughout the process of transfer and thereafter. She promised, not for the first time, that the proposed memorandum and articles of association would be made available to Parliament. As I see it, we are still awaiting that momentous day. But whatever information is provided by the Minister today or hereafter will no doubt be limited by the requirements of full confidentiality to which she referred.

Therefore it is hard to know just what Parliament is to be told. So far, we have been told only what the Government intend. We have been told nothing of what they have, in fact, arranged.¹⁴

During the Second reading in the Lords, Baroness Chalker said:

...as the Bill progresses, I shall explain more¹⁵.

During the Report Stage in the Lords Baroness Chalker said:

I understand your Lordships' wish to be fully informed about the Government's plans for the foundation. I can assure your Lordships that progress is being made although, to answer ... it is slow and not yet complete. I suppose that it is fair to say that I am somewhat embarrassed that I cannot provide your Lordships tonight with complete answers to your questions.¹⁶

¹⁴ HL Deb 24 April 1995 c.762

¹⁵ HL 28 February 1995 c.1410

¹⁶ HL Deb 24 April 1995 c.764

Baroness Chalker told the Lords¹⁷ that further work must be done with the Crown Agents before those terms of the transfer become clear. The Minister gave an undertaking that she

...will prepare a paper for your Lordships and for presentation to the House of Commons Select Committee on Foreign Affairs so that there will be an opportunity to have a clear view of the proposals before the proposed transfer takes place¹⁸.

Nevertheless, Lord Judd was not satisfied and said:

...safeguards must exist to ensure that Parliament has the final say before the deed is done. Otherwise, by this Bill, we are enabling something to happen and we do not know what that something will be.¹⁹

C. Founder Members

At present, there is little detail about the proposed membership of the independent foundation. At some future date, after privatisation, other individuals may be invited to join as members. Although members will not share in the assets of the company, it will be important to ensure that potential conflicts between suppliers and donors are avoided. Although the founder members will be independent of government, Baroness Chalker said that the Government would hold up the transfer if it were not satisfied that the founder members possess the requisite competence and integrity.²⁰

As noted above, various institutions have expressed an interest in becoming members of the foundation and holding shares, including: British Consultants Bureau, the British and international chambers of commerce, and chartered institutes, including the Chartered Institute of Building. Once established, the foundation and the Government will reach agreement on the terms of the transfer to the operating company. The Government see the foundation, especially its membership, as a way of assuring clients that the Crown Agents "will continue to operate very much as now".²¹

¹⁷ HL Deb 24 April 1995 c.765

¹⁸ HL Deb 24 April 1995 c.771

¹⁹ *ibid*

²⁰ HL Deb 24 April 1995 c.765

²¹ *ibid*

The independent foundation is expected to have a social and developmental character but, at the same time, will continue its business activities on a fully commercial basis. In short, the intention is to transfer the assets of the Crown Agents to a public company limited by guarantee: a structure that is also used by some social, educational and charitable bodies.

D. Memorandum and Articles of Association

The name and social and developmental character of the foundation, which are not specified in the Bill, are to be set out in the memorandum and articles of association. Baroness Chalker said:

The whole purpose of the memorandum and articles of association for the foundation is to spell out those very social and developmental objectives.²²

At the time of writing, the memorandum and articles of association have not been published. On 24 April 1995, Baroness Chalker told the Lords that she hoped that the memorandum and articles of association would come "to Parliament early next month - or as soon as they are ready"²³. The Minister told the Lords that:

I believe that it is perfectly feasible and appropriate that we should write into the memorandum and articles of association of the foundation a requirement for the agreement of, say, two-thirds or even 75 per cent of the members of the foundation before any change can be made to its memorandum and articles of association. By writing that into the original, we can safeguard the foundation in the future against adverse changes that might be attempted.²⁴

The memorandum and articles of association are not now expected to be published in time for the Second Reading debate. These documents should clarify the future status of the Crown Agents, not least whether or not the foundation is to apply for charitable status. The Government may not have fully agreed the precise form of the successor company. Some aspects may still be subject to negotiation with the Crown Agents. In the absence of any final decision the Government may not wish to show its negotiating hand. For example, in addition to deciding about charitable status, the future capitalization may also be an outstanding issue (see below).

²² HL Deb 24 April 1995 c.777

²³ HL Deb 24 April 1995 c.766

²⁴ *ibid*

E. Capital structure and borrowings

Clause 2 of the Bill provides for the outstanding debt of £2 million to be repaid to the National Loans Fund. The successor business will therefore need to decide how this repayment is to be financed. In the Government's view, this arrangement reflects the balance between the interests of the Crown Agents and the taxpayer. When pressed on the capital structure of the successor company, especially whether the burden of debt should not be converted into equity, Baroness Chalker said that the details of the capital structure could not be decided until closer to the day when the transfer of the Crown Agents takes place.²⁵ Baroness Chalker did add that since Clause 4 allows the Secretary of State to lend to the new Crown Agents a range of options would be possible.

F. Staffing issues

The Crown Agents employ about 600 permanent staff - mainly in Sutton and central London - plus 250 overseas and contract staff. The Crown Agents have no plans for redundancies as a result of the proposed change in status.²⁶ The Government anticipates that the Provisions of the Transfer of Undertakings (Protection of Employment) regulations 1981 will apply. Employee's terms and conditions of employment will therefore be preserved at the time of the transfer.²⁷ Although the pension funds are a matter for the trustees, Baroness Chalker told the Lords that it was her understanding that the Crown Agents had no plans to alter their pension arrangements.²⁸

III To privatise or not to privatise

A. The Contrast with the Commonwealth Development Corporation

The Government's decision to privatise the Crown Agents is in contrast with its policy towards the Commonwealth Development Corporation (CDC). The Commonwealth Development Corporation Bill [Bill 66 1994/95] went through all its House of Commons stages on 16 March 1995. Amongst other things, the CDC Bill provides for an increase in

²⁵ HL Deb 24 April 1995 c.774

²⁶ HL Deb 28 February 1995 c.1411

²⁷ *ibid*

²⁸ *ibid*

the level of borrowings but not a transfer to the private sector.

The CDC and the Crown Agents are both considered successful publicly-owned enterprises, effective in helping developing countries. But whereas the Crown Agents is to be transferred to the private sector, the Government wishes to keep the CDC in the public sector. The difference in policy towards the two institutions has raised much interest. The Government's view is that the difference reflects the very different traditions, history and functions of each institution. The CDC is a publicly owned enterprise which acts as a catalyst for private finance by means of providing public loans as risk capital in areas which may be neglected by a privately owned enterprise. The CDC is inextricably linked into the UK's overseas aid programme. The Crown Agents on the other hand, act primarily as a procurement agency for an increasingly wide range of clients, not only the UK Government.

In the Government's view, the case for privatising the Crown Agents is simple: it is no longer necessary or appropriate for the Crown Agents to remain within the public sector. In the words of Baroness Chalker:

The present Act is increasingly outdated and no longer provides the right framework. Sixteen years ago Crown Agents provided the bulk of their services under funding provided through the British aid programme even though they served many other public sector clients around the world. Today Crown Agents obtain over 70 per cent of their work from non-UK principals. The change in the pattern of British bilateral aid has also meant that ODA has less need of Crown Agents' traditional procurement services than in the past, although their use for humanitarian aid delivery has expanded enormously in recent years.²⁹

B. An Unusual Route Towards Privatisation

Although the route chosen for the Crown Agents is an unusual one, the Crown Agents will nevertheless be classified as a private sector business after transfer. Arguably there has been some reluctance by the Government to use the term privatisation in the context of the Crown Agents. Preferred terms seem to be "transfer to an independent foundation" or "moving into the private sector". This reluctance to use the term (if true) may be connected to reports³⁰ that certain aid donors, notably the Japanese, "lobbied the UK government against outright privatisation, arguing that this would imperil the honest broker status of the organisation". In evidence to the Foreign Affairs Committee, an official at the ODA, Mr Barrie Ireton, said:

²⁹ HL 28 February 1995 c.1409

³⁰ For example, "Crown Agents welcome an independent role" *Financial Times* 26 August 1993

I think that it is fair to say that the Japanese would have concerns if the Crown Agents simply became an ordinary commercial private business. We will undoubtedly have further discussions with the Japanese, as well as other clients possibly, before ministers have concluded their review.³¹

The Japanese, who are the second biggest client (after the UK Government) of the Crown Agents, would seem to question whether the traditional high standards of probity and impartiality would be maintained if the Crown Agents were taken over and used as some kind of marketing arm of an international conglomerate. Perhaps in order to meet such concerns, the decision was taken not to go for a normal privatisation but instead to go for the unusual route of a transfer to an independent foundation. Reproduced below is the Government's press release announcing the decision to privatise the Crown Agents.

OVERSEAS DEVELOPMENT: NEW RELEASE

16 AUGUST 1993

62/93

CROWN AGENTS' FUTURE DECIDED

The Government has decided to privatise the Crown Agents by transferring them to a newly-created independent foundation with a social purpose and developmental objectives.

Baroness Chalker, Minister for Overseas Development, announced this in a letter to David Howell, chairman of the Foreign Affairs Committee. This follows her statement to Parliament in December 1992 that the future status of the Crown Agents would be reviewed.

Baroness Chalker said membership of the foundation would reflect the international character of Crown Agents' activities and its social purpose and would include representatives from the corporate sector. Crown Agents will maintain their traditional standards of probity and impartiality and will continue their business activities on a fully commercial basis, servicing their capital in the normal way and generating surpluses which will be available to the foundation to finance its developmental objectives. Completion of the transfer will be subject to the passage of appropriate legislation and satisfactory plans being drawn up.

The Crown Agents Bill will repeal the Crown Agents Act 1979. According to a news release from the Crown Agents, this transfer will allow the Crown Agents to maintain its traditional high standards while continuing its business activities in a fully commercial basis in terms of

³¹ Expenditure plans of the Foreign & Commonwealth Office and the Overseas Development Administration. Foreign Affairs Select Committee, Fourth Report HC 562, 1992/93, Q126

servicing its capital in a normal way and generating surpluses which would be available to the foundation to finance its developmental objectives.

The press release³² states:

Membership of the new foundation will reflect the international character of Crown Agents' activities and its social purposes. The foundation will include representatives from a wide range of organisations concerned with development and from the corporate sector.

C. Views of the Crown Agents' Management

The views of the Crown Agents' management were set out in the 1993 Annual Report. The Chairman of the Crown Agents, Mr David Probert, stated:

In my report last year I referred to the review of the status of the Crown Agents which had been undertaken at the request of the UK Government. Since 1979, the Crown Agents has been a public corporation governed by Act of Parliament, with an initial capital provided by the UK Government and a Board appointed by the Secretary of State for Foreign and Commonwealth Affairs.

Since incorporation, the Crown Agents has not received any subsidies from HM Government and has made payments of over £20 million in capital and interest to Government. The Crown Agents, in the last decade, has benefited the reputation of the United Kingdom in overseas markets; more importantly, it has rendered aid programmes, irrespective of the nation and organisation which funded them, more effective, to the benefit of the recipients.

The Crown Agents is an international organisation, serving 130 different countries, with only 27% of its income originating in the United Kingdom. In the circumstances, it is appropriate that HM Government should review its ownership of the Crown Agents.

The Board of the Crown Agents, after consulting with its advisers, Price Waterhouse and for Overseas Development, Baroness Chalker of Wallasey, that the interests of clients, aid programmes and employees would be well served if the organisation were to remain as part of the UK public sector, but with greater freedom of operation than its 1979 Act of Parliament permits.

The Board, however, recognised that the preponderance of non-UK clients might make it more desirable for the ownership of the Crown Agents to reflect a wider base than that of UK Government. As an alternative, the Board therefore recommended that the business and assets of the Crown Agents should be transferred to a specially formed foundation, the profits of which would not be distributed but retained for the development of the organisation and its services to clients. The members of the foundation would be responsible for appointing the Board of Directors. Such a structure would ensure that the Crown Agents continues to be good for development, good for the transfer of skills and good for international trade.

³² Source: Crown Agents News Release 16 November 1994.

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In reviewing the alternatives, the Board was struck by the level of support for Crown Agents, its services and what it stands for, from a wide range of individuals, governments and domestic and international organisations. I thank them all for their cooperation and also for their support for the foundation concept.

Baroness Chalker announced in August 1993 that, subject to certain conditions, Parliamentary approval would be requested to transfer the assets to a suitably formed Foundation. It is hoped that such legislation will be enacted in 1994-1995.

In principle, the Board of Crown Agents welcomes the Government decision and awaits the necessary legislation. The continuing support of HM Government will be important to ensure that Crown Agents has the flexibility to react to changing market conditions both before and after legislation so as to secure the future viability of the business.

In his 1994 statement, the chairman also said:

In January 1995, the Minister commenced the legislative process which, when completed, will enable the Secretary of State to transfer Crown Agents to the Foundation. Several issues, such as the capital structure, the extent of the continuing involvement of the British government and membership of the Foundation, remain to be resolved, but the Board hopes that the new structure will be in place by 1 January, 1996.

Crown Agents looks forward to the challenges and the opportunities that the new status will provide. It welcomes the continued support of the British Government.

In his review of 1993, the Managing Director of the Crown Agents, Mr Peter Berry, stated:

The discussion with Government in 1993 on the future status of Crown Agents to which the Chairman refers, brought home to us that, despite the huge changes in politics, economics and technology during our 160-year history, we have remained constant to our core purpose of providing financial, professional and procurement services for the economic development of our clients. We are proud that we are entirely self-supporting; this ensures that we are ourselves exposed to and tested by the rapidly changing market place and must deliver services which are contemporary, economic and effective.

The sometimes rapid changes in the policies of aid donors, our primary market in recent years, can require more speedy and flexible adjustment in the construction and delivery of our services than our present statutory constitution allows and at an operational level we therefore welcome the proposed changes.

Mr Berry's views were also reported in the *Financial Times*.³³

For Mr Peter Berry, managing director of the Crown Agents, escape from bureaucratic government

³³ "Crown Agents welcome an independent role" *Financial Times* 26 August 1993

procedures will come as a relief. 'When you need ministerial consent to do anything materially different from the act that governs us, then there is 'a stop in the mind' against doing it,' he says. 'It will be very different going back to a board. There will be no disincentive to be pro-active. Accountability will be closer to home.' It will also be easier to demonstrate to doubters that it is independent of government pressure to 'buy British'.

And later:

But the pressure against privatisation was not unanimous. Mr Rajhavan Srinivasan, head of the World Bank's procurement division in Washington, said some of the bank's staff would like to see both the Crown Agents and Germany's GDZ, its main 'competitor', privatised, to make independence transparent and to boost competition. 'I don't have strong feelings over their being privatised,' he says. 'I have been dealing with them for 20 years, and I know they are highly professional, and their integrity is beyond question.' He hopes independence from government will lead to 'a less bureaucratic and clerical way' of operating.

D. What are the likely consequences of a transfer to the private sector?

In many ways the transfer of the Crown Agents to the private sector will have little effect on the operations of the Crown Agents in the short term. They already operate in a highly commercial manner and even after the transfer to the private sector they will retain their developmental objectives. As in the public sector, a privatised Crown Agents will not distribute profits. The Agents are unlikely to move into unfamiliar areas quickly. There will be no change in the number of civil servants as a result of the transfer to the private sector since (as noted above) employees of the Crown Agents are already outside the Civil Service head-count. However, some 600 staff will no longer be included in the public sector manpower totals.

As noted earlier, one element of the government's rationale for transferring the Crown Agents to the private sector may simply be that there is no particular reason why the activities of the Crown Agents should be performed by the public sector. But one consequence of privatisation may be that once released from the public sector, the Crown Agents will have greater commercial freedom, and may be allowed to offer their services in the UK, especially to local authorities and health authorities. This opportunity is only likely to be made available to a privatised Crown Agents since it is a general policy of the UK government not to allow public sector organisations to compete directly with private firms in the UK. This policy assumes that public sector enterprises have an unfair advantage over privately owned competitors. In short, given the government's constraints on allowing greater commercial freedom to publicly owned enterprises, a transfer to the private sector may be the only way of providing greater market opportunities to the Crown Agents in the UK. According to the

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*Financial Times*³⁴:

...as an independent foundation, the Crown Agents will no longer be limited to serving aid agencies and other public bodies, as its present constitution dictates. Mr Berry, managing director, says: "Newly established private corporations in the developing world, which used to be our clients when they were government-owned, are coming back to us asking if we can continue to supply them. Under our present constitution we have to say no.

There is little reason to suppose that the (new) corporate structure of the Crown Agents will have any effect on delivering the UK's overseas aid.

IV THE BILL

A. Enabling Legislation

The Government says that the Bill is a piece of enabling legislation. Baroness Chalker reaffirmed this view during the Report Stage in the Lords when she said:

Enabling legislation is the normal way of proceeding, accepted by your Lordships' House and another place on every previous occasion of which there have now been many, when there is a transfer from the public sector to the private sector.³⁵

Baroness Chalker told the Lords:

The intention behind the proposal is that we recognise the unusual nature of the foundation route. We want to ensure that it settles down successfully. We also want to provide full assurances to the international clients of the Crown Agents that the foundation will maintain a continuity of principles and purpose with those of the existing corporations.³⁶

B. The Bill's Clauses

Below are brief notes the Bill's clauses, which have been taken from explanatory and financial memorandum:

³⁴ "Crown Agents welcome an independent role" *Financial Times* 26 August 1993

³⁵ HL Deb 24 April 1995 c.770

³⁶ HL Deb 28 February 1995 c.1411

The Bill provides for the vesting of the property, rights and liabilities of the Crown Agents for Overseas Governments and Administrations ("Crown Agents") in a company nominated by the Secretary of State; and provides for securities in the successor company to be issued to the Government, for the subsequent dissolution of the Crown Agents and for the consequential repeal of the Crown Agents Act 1979 apart from provisions relating to the Crown Agents Holding and Realisation Board.

Clause 1 provides for the vesting of the property, rights and liabilities of the Crown Agents, under the law of the United Kingdom or that of any other country or territory, in a company nominated by the Secretary of State (the "successor company"). It provides for the vesting to take place on such day as the Secretary of State may by order appoint (the "appointed day"). The nominated company is to be one which is formed and registered under the Companies Act 1985 and which, on the appointed day, is limited by shares and is wholly owned by the Crown. Schedule 1 contains provisions supplementary to clause 1.

Clause 2 provides for the Crown Agents at the direction of the Secretary of State to repay its commencing capital debt and for the repayments to go to the National Loans Fund. It also empowers the Secretary of State to direct that the Crown Agents be deemed to assume a debt to him of such amount and on such terms as he may determine and for repayments of the principal or interest on such deemed debt to be paid into the Consolidated Fund. The approval of the Treasury is required for the exercise by the Secretary of State of these powers.

Clause 3 provides that, as a consequence of the vesting by virtue of clause 1, the successor company is to issue securities of the company to the Secretary of State at his direction. It provides that such a direction may only be given while the company is wholly owned by the Crown and that any dividends or other sums received from these securities, or on their disposal (if for consideration) are to be paid into the Consolidated Fund. The approval of the Treasury is required for the exercise by the Secretary of State of these powers.

Clause 4 empowers the Secretary of State, while the successor company is wholly owned by the Crown, to acquire securities of the successor company or rights to subscribe for any such securities. It provides for expenses incurred by the Secretary of State to be paid out of money provided by Parliament and for dividends or other proceeds of disposal of these securities to be paid into the Consolidated Fund. The approval of the Treasury is required for the exercise by the Secretary of State of these powers.

Clause 5 provides that the statutory accounts prepared by the successor company under the Companies Act 1985 shall be drawn up as if the vesting under clause 1 took place at the end of the Crown Agents' last full accounting year before the vesting, and that the value or amounts included in the accounts of the successor company, including reserves and accumulated realised losses, shall be taken to be those included in the Crown Agents accounts for that accounting year.

Clause 6 provides that the successor company, its subsidiaries and any company owning the shares in the successor company may use the name "Crown Agents" notwithstanding the provisions of the Companies Act 1985

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Clause 7 provides for the successor company to be treated for all purposes of corporation tax as if it were the same person as the Crown Agents.

Clause 8 provides for the Crown Agents to continue in existence for a period after the appointed day, with a minimum of two rather than six members, in order to discharge its functions under clauses 9 and 10. Clause 8 provides for the dissolution of the Crown Agents once the Secretary of State is satisfied that the Crown Agents have substantially discharged these functions. The period between the appointed day and dissolution is referred to as the "transitional period". Any expenses incurred by the Crown Agents during the transitional period are to be met by the successor company.

Clause 9 requires the Crown Agents and the successor company to take any steps which may be necessary to secure that the vesting in the successor company of foreign property, rights or liabilities is effective under the foreign law.

Clause 10 provides that during the transitional period the Crown Agents shall continue to have a duty under sections 11 and 22 of the Crown Agents Act 1979 (which will be repealed on the appointed day) to make an annual report to the Secretary of State for each accounting year ending before the appointed day and to prepare statements of accounts for such years.

Clause 11 makes provision in respect of the Crown Agents Holding and Realisation Board ("CAHRB") established under the Crown Agents Act 1979 consequential upon the vesting of the business of Crown Agents.

Clause 12 makes provision with respect to the powers to make orders under the Bill.

Clause 13 amends the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 in relation to directors of the successor company and CAHRB. It also empowers the Secretary of State to make consequential amendments or revocations of subordinate legislation. Schedule 2 makes provision for repeals.

Clause 14 defines terms used in the Bill.

Clause 15 makes provision for the citation and extent of the Bill.

Financial effects of the Bill

As a consequence of vesting under clause 1 there will cease to be power to direct the payment of excesses of revenue to the Secretary of State under section 16 of the Crown Agents Act 1979. However, no payments have been made under this section for some years.

The requirement in *clause 2* for repayment of outstanding capital debt will result in a payment of £2 million of principal to the National Loans Fund, not including any premium or discount arising from interest rate differentials at the date of payment. The Consolidated Fund may receive payments from repayment of any deemed debt directed under *clause 2* or payments in respect of, or on the disposal of, securities which are issued under powers in *clause 3*.

If the Secretary of State exercises the power under clause 4 to acquire securities in the company, the cost will be met out of money provided by Parliament and receipts will be paid into the Consolidated Fund.

There will be some administrative expenses incurred by the Secretary of State in connection with the Bill. These will be met out of money provided by Parliament.

Effects of the Bill on Public Service Manpower

The number of staff in the Overseas development Administration engaged on work in connection with the Crown Agents is very small and there will be little or no reduction in manpower arising from the provisions of the Bill. The vesting of the business of Crown Agents will transfer about 600 staff from the public sector.

Business Compliance Cost Assessment

There are no cost compliance implications to business consequent on the provisions of the Bill.

Annex one:

Financial Crisis of Own-Account Activities

Some twenty years ago, the Crown Agents were involved in a financial crisis and a series of official inquiries. The crisis arose because, between 1967 and 1974, the Agents conducted on their own account a substantial secondary banking activity which involved investments and lending which were "...unwise in both character and in degree."³⁷ These included, for example, property investments in Australia valued at some £41 million. With the 1973 oil crisis and the problems faced by property developers and secondary bankers generally, the Crown Agents became exposed to substantial losses. Total losses on their activities were estimated to be in excess of £200 million. In December 1974 the Crown Agents made a formal request to the UK Government for financial assistance and were provided with a recoverable grant of £85 million. On 23 April 1975 a Committee of Inquiry were appointed to inquire into the circumstances leading up to the request for financial assistance. The Committee, under the Chairmanship of His Honour Judge E.S Fay, duly published its report on 1 December 1977.

On 28 February 1978 both Houses of Parliament resolved that a Tribunal of Inquiry should be set up, under the Tribunals of Inquiry (Evidence) Act 1971, to investigate certain aspects of the conduct of the Crown Agents between 1967 and 1974. The Tribunal was established on 1 March 1978 and reported on 26 May 1982.³⁸ Amongst other conclusions, the Tribunal suggested that incompetence, rather than corruption, was the main cause of the losses and that their unique nature - without a formal constitution - had enabled the Crown Agents to believe that, within wide limits, they could do what they liked.

A Government White Paper, *The Future of the Crown Agents*,³⁹ published in April 1976 outlined proposals for legislation to give the Crown Agent a corporate legal status, to define their functions and to define the powers of the Minister. At that time, the Government believed it to be essential that the constitutional relationship be clarified, defined, and given legal status.⁴⁰ The Crown Agents Act 1979 was the first time since the inception of the Crown Agents in 1833 that Parliament had legislated about the Crown Agents status.

³⁷ "Report by the Committee of Inquiry appointed by the Minister of Overseas Development into the Circumstances which led to the Crown Agents requesting financial assistance from the Government in 1974" HC 48 1977/78. The 'Fay Report'.

³⁸ HL 149 and HC 364 1981/82

³⁹ Cmnd 6445

⁴⁰ See Government Statement on the report of the Committee of Enquiry HC 49 1977/78 para.16.

Annex two:

Crown Agents in Development

Examples of the Crown Agents' activities from the 1994 Annual Report (*client in brackets*):

Angola

Supervised infrastructural, economic and fisheries components of ports rehabilitation study (*World Bank*)

Belarus

Advised the local project implementation agency on the procurement of goods and services under a World Bank institution-building loan (*British Know-How Fund*)

Central Asia

Managed the inauguration of a regional bank training centre based in Uzbekistan, and serving also Kyrgyzstan and Tajikistan (*European Community*)

Dominica

Prepared study for road and bridge improvement study (*Caribbean Development Bank*)

Egypt

Conducted a technical and financial evaluation of one of the country's largest land reclamation projects (*Arab Authority for Agricultural Investment and Development*)

Ethiopia

Purchased vehicles and equipment for civilian police (*ODA*)

Fiji

Conducted in-country procurement courses (*World Bank*)

The Gambia

Reviewed the current operations of public sector procurement, identifying constraints and recommending appropriate staff development and training programmes (*World Bank*)

Hungary

Assisted in the design of an improved system for tax administration (*World Bank*)

India

Provided railway engineer and transport economist to undertake technical appraisals (*ODA*)

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Japan

Continued to manage a purchasing programme for fourteen sub-Saharan African countries with a total value to date of \$720 million (*Japanese Government*)

Kazakhstan

Advised the national agency for foreign investments, end-user ministries and local procurement agencies on the conduct of major procurement programmes under World Bank guidelines (*World Bank*)

Kenya

Arranged local procurement and random quality testing, and monitored the distribution of essential drugs kits (*ODA*)

Mongolia

Provided adviser on policies, strategies and programmes to the Aid Coordination Board (*United Nations Development Programme*)

Malawi

Assisted with procurement and strengthened the operational capacity of the local government system (*World Bank*).

Malta

Reviewed electrical and mechanical equipment specifications (*European Commission*)

Micronesia

Conducted review of federal education system at national and state levels (*Asian Development Bank*)

Mozambique

Designed and implemented aid monitoring system for the Bank of Mozambique and validated Norwegian and British programme aid funds (*ODA and NORAD*)

Nepal

Provided procurement agency services to population and family health project (*World Bank*)

Papua New Guinea

Established specialist unit to advise finance and planning department on privatization policy (*World Bank*)

Poland

Provided technical assistance to the work-out department of Bank Zachodni (*European Commission*)

Romania

Completed training and consultancy programme to advise government on the strategy needed to adopt a national quality programme for industry (*British Know-How Fund*)

Russia

Continued to work alongside the Russian government in managing a \$350 million. import Rehabilitation Loan to improve the agriculture, health, transport and coal sectors (*ODA*)

Sierra Leone

Provided specialist to the central statistics office (United Nations Development Programme)

Slovenia

Established a project coordination unit for regional customs programmes for all eleven PHARE beneficiary countries (*European Commission*)

South Africa

Arranged and administered the secondment of entrepreneurs from Soweto to British companies (*ODA*)

Syria

Proposed methods of financing and implementing the modernization of the Commercial Bank and the Central Bank (*European Commission*)

Tanzania

Undertook a comprehensive review of public procurement and supply management arrangements (*World Bank*)

Thailand

Provided rubber-marketing expert to assist in mid-term project review (*European Commission*)

Vietnam

Enhanced the effectiveness and efficiency of the banking sector through a sustained programme of technical assistance and staff training.(*Swedish International Development Authority, administered by the World Bank*)

Worldwide

Managed disbursement arrangements for 150 British bilateral aid agreements with total value of £1.8 billion .(*ODA*)

Former Yugoslavia

Administered convoys delivering humanitarian aid, being responsible for recruitment, supplies, cargo movement, vehicles, vehicle workshops and logisticians involved in WHO and UNHCR

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operations (*ODA*)

Zambia

Provided an interim secretariat to assist the Revenue Board in establishing the Zambia Revenue Authority (*ODA*)

Annex three:

Copy of letter from Baroness Chalker to the chairman of the Foreign Affairs Committee 13 August 1993

In December 1992 I announced that the future status of the Crown Agents would be reviewed. In view of the interest expressed in this matter by the Foreign Affairs Committee in your recent report on the Expenditure Plans of the Foreign and Commonwealth Office and the Overseas, Development Administration I am writing to inform the Committee that the Government has decided that Crown Agents should be privatised and that the business should be transferred to a newly-created independent Foundation with a clear developmental mission.

I am sorry that it proved impossible for the Government to make a statement to Parliament on this important issue before the summer recess, but we believe it is in the interest of the Crown Agents to make an announcement now rather than wait until the Autumn.

Crown Agents have a particular role to play in development. Since they were first established 160 years ago they have developed specialist expertise in the provision of a wide range of integrated procurement, technical and financial services. As amply illustrated by their activities on ODA's behalf in former Yugoslavia they are also able to respond quickly and effectively in the provision of humanitarian relief. Their work is firmly rooted in the principles of good government.

Crown Agents' overseas clients, which include bilateral aid donors and international aid agencies as well as developing country governments, accord great importance to Crown Agents, commitment to maintaining the highest standards of probity and impartiality and to assisting recipient countries in the development of their human and material resources. The Government has taken full account of these concerns.

In order to maintain the social purpose and developmental objectives of the Crown Agents the Government believes that the most appropriate way to effect privatisation would be for the business to be transferred to a newly created independent Foundation. Membership of the Foundation would reflect the international character of Crown Agents' activities and its social purpose and would include representatives from the corporate sector, Subject to the passage of appropriate legislation and satisfactory plans being drawn up by Crown Agents, together with potential Foundation members, the Government will reconstitute Crown Agents as a company under the Companies Act and transfer full ownership of that company to the Foundation.

Under these arrangements Crown Agents would continue their business activities on a fully commercial basis. They would therefore be expected to service capital in the normal way and generate surpluses which would be available to the Foundation to finance its developmental objectives.

The Foundation will seek to contribute to the broader goals of sustainable development and good government and to enhance the human resource skills of recipient countries, in particular by drawing on its professional expertise and experience. For example the Foundation would be well qualified to provide technical training in good procurement practice and to encourage developing countries to benefit from the adoption of the same high standards, of integrity which Crown Agents themselves exemplify.

The Government's decision takes account of the views of the current Board for whom an independent Foundation is the preferred privatisation route.

Accordingly the Government intends to invite the Crown Agents to put forward detailed proposals for a Foundation. I propose to make a further announcement to Parliament in due course.

Technical Note:

Crown Agents: External Financing Limit

The External Financing Limit for the Crown Agents as set out in the Statistical Supplement to the Financial Statement and Budget Report 1994-9 (Cm 2519) has been increased from zero to £3.5 million. This is due to a classification change and has no consequence for public expenditure.

Baroness Chalker of Wallasey
HL Deb 15 Dec. 1994 c132WA

Recent papers on related subjects have been:

Economic policy & taxation

Research Paper

95/7	A Minimum Wage	17.01.95
95/10	Pension Fund Regulation	23.01.95
95/20	Economic & Monetary Union	14.02.95
95/22	The Tobacco Products Labelling Bill	15.02.95
95/35	The Commonwealth Development Bill	15.03.95
95/46	The pensions Bill (HL)	24.04.95
95/53	Building Societies (Joint Account Holders) Bill	26.04.95
95/54	Economic Indicators: May 1995	01.05.95
95/63	Unemployment by Constituency: April 1995	17.05.95