

# HMSO

## Research Paper 96/77

28 June 1996



This Research Paper gives a brief history of HMSO and examines current developments including the planned privatisation later in 1996. The paper also offers an opportunity to provide a briefing on the *Statutory Instruments (Production and Sale) Bill* [Bill 156 of Session 1995/96] which will amend the *Statutory Instruments Act 1946* to make provision (with retrospective effect) for the printing of statutory instruments to be contracted out under the authority of the Queen's Printer. The Bill is due to be debated in the Commons on 3 July.

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## Summary

HMSO is a Government department which is currently the responsibility of the Office of Public Service in the Cabinet Office, and is organised as an Executive Agency. It dates back to 1786, but its more recent history has been marked by uncertainty over possible privatisation. In late 1995 Roger Freeman, Chancellor of the Duchy of Lancaster, announced that HMSO would be privatised, with a residual body remaining in the public sector to administer Crown copyright, and Parliamentary copyright if so agreed by Parliament. There was considerable debate in Parliament on the privatisation plans, but an Opposition motion to postpone consideration of privatisation was defeated on 18 March 1996. Bids from a number of organisations are currently being evaluated and privatisation is expected later in 1996.

No primary legislation appears to be required to privatise HMSO provided that there is a residual public body which can carry out the functions of HMSO/Queens Printer listed in a series of enactments. In preparation for privatisation, however, the *1946 Statutory Instruments Act* was examined, and it became apparent that its amendment was required to make lawful a longstanding practice by HMSO in contracting out the printing of statutory instruments. *The Statutory Instruments (Production and Sale) Bill* which is due to be debated on 3 July is intended to rectify the legal position, with retrospect effect. The Bill would be necessary even if HMSO remained on the public sector, since legal authority for the contracting out of the printing of statutory instruments would be required. Similarly, privatisation of HMSO could go ahead even if the Bill were not to be enacted, since the residuary body of HMSO could undertake the direct production of statutory instruments. The legal position would, however, remain unsatisfactory.

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# I HMSO

## A. Background

HMSO was established in 1786 as an agency buying stationery for Government departments. Initially its role was confined to buying stationery on behalf of a number of departments and it had no involvement in publishing at all. The agency was established partly as a result of a Bill promoted by Edmund Burke MP as a member of the Duke of Portland's administration of 24 February 1783 to reform offices of the Exchequer.<sup>1</sup> Horace Walpole as Usher of the Exchequer had farmed out to deputies the responsibility of providing stationery to government offices. When Pitt's ministry of 1784 was formed the new Prime Minister decided to tackle the extravagant charges being made for stationery. Initially the supply of paper and the printing of Parliamentary Papers continued to be handled by the Speaker of the House of Commons who contracted the work out to commercial Parliamentary Printers who had the monopoly.

After the Union with Ireland in 1801 the volume of Papers increased and regular printing became the practice. However, general distribution of Parliamentary Papers to the public did not begin until after a Resolution of 13 August 1835, that Parliamentary Papers should be made accessible to the public by purchase at the lowest price. In 1836 the 'Sale Office' of the House of Commons was established in the charge of Messrs Hansard, printers to the House, taking any profit in abatement of the printing bill. In 1855 HMSO became the distributors for Hansard's Parliamentary Debates. In 1882 Hansard and Eyre & Spottiswoode, the Commons and Lords printers respectively, became agents of the Stationery Office instead of Parliament. All Parliamentary Papers were kept in a single store controlled by the Stationery Office whose agents sold all of them, with the profits going to the Exchequer and the Stationery Office become responsible for printing, although private printers carried out the work. In 1887 it took over the publishing of Acts of Parliament and in 1907 The Speaker appointed the Controller of HMSO printer of the Votes and Proceedings and Journals of Parliament. The printing and publishing of the Official Report of Parliamentary Debates was taken over in 1909. In 1889 the Controller of HMSO had become "Printer to Her Majesty of All Acts of Parliament and holder of Royal Copyrights". Stationery and printing services were therefore centralised in HMSO although work was contracted out. In 1912 the first Stationery Office bookshop was opened. By about 1920 the Office had become virtually the sole publisher of all Parliamentary and non-Parliamentary publications.

The Stationery Office began to undertake its own printing in the First World War when the large amount of printing and requirements of confidentiality led to the Office taking over

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<sup>1</sup> An Act for establishing certain Regulations in the Receipt of HM's Exchequer. For further background see HMSO: The story of the first two hundred years [1986] by Hugh Barty-King

printing firms some through requisitioning powers under the Defence of the Realm Act.<sup>2</sup> HMSO retained direct printing facilities after the war despite a number of criticisms and enquiries on the role of State printing. A Treasury Committee, the Gretton Committee<sup>3</sup> considered in 1927 that it was reasonable for about one third of printing to be produced by Stationery Office factories and this remained the standard rule for the interwar period. It also recommended that all secret or highly confidential work should be carried out at Government printing works (para. 408). The Second World War again brought a massive increase in business,<sup>4</sup> and the one third rule was suspended but not officially abandoned until 1957 when the Select Committee on Estimates recommended that a more flexible approach be adopted.<sup>5</sup> In the 1960s the substantial part of HMSO moved to Norwich, along with a substantial part of its operations, as part of the government re-location policy of that era.

### B. Modern History

In the 1970s increasing pressure on public expenditure led to the pressure on the long established system of charging the cost of HMSO Services to an "allied service" Vote. Departments took over full accountability though repayment for goods and services supplied by HMSO following the HMSO Trading Fund Order 1980.<sup>6</sup> The 1973 Act provided a financial framework covering operating costs and receipts, capital expenditure borrowing and net cash flow. A trading fund is required to break even, taking one year with another, and has powers to borrow to meet capital expenditure and working capital requirements and to establish reserves out of surpluses. Within this framework a trading fund body can meet outgoings without detailed cash flows passing through the Parliamentary Vote accounting arrangements. The Order was debated on 25 March 1980.<sup>7</sup> HMSO was given a remit to charge such prices as would recover the full cost of purchase or supply and make an agreed return on capital employed.

From 1982 departments were no longer required to purchase supplies and services from HMSO, and from 1992 Parliament was also untied from HMSO. In December 1988 HMSO

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<sup>2</sup> One of the firms at Hare Street, Bethnal Green was purchased in 1920 by the Stationery Office and the bulk of Parliamentary work was printed there, including Statutory Rules and Orders (Cmd 2828 para 115.) In 1928 the work was moved to SE London, and after the War to Drury Lane premises before the present location

<sup>3</sup> Report of the Inquiry into Government Printing Establishments Cmnd 2828 March 1927

<sup>4</sup> There was an enormous increase in the volume of subordinate legislation especially under Defence Regulations partly leading to the *1946 Statutory Instruments Act* which was an attempt to control the flow of SIs. The Act required HMSO to publish statutory instruments issue lists showing the serial number, short title and date of each SI

<sup>5</sup> First Report Her Majesty's Stationery Office HC 33 1956/7. In fact the proportion of work carried out in HMSO factories had dropped back to one-third by 1957 and a very small proportion of secret work was contracted out [HC33 Q1490]. Parliamentary work remained in-house but most non-Parliamentary work (presumably including SIs) was contracted out (Fourth Memorandum from Controller of HMSO para 9)

<sup>6</sup> SI no. 456 The Order was made under the *Trading Fund Act 1973*

<sup>7</sup> HC Deb vol 981 c.1377-1397

became one of the first Executive Agencies under the Next Steps initiative. It met or exceeded financial targets set since 1980, except for 1990 and 1994 when it fell marginally short due to exceptional redundancy costs.<sup>8</sup>

HMSO has operated in conditions of uncertainty about its long term future for a number of years. It was transferred from the Treasury to the Office of Public Service and Science in 1992. Its Framework Document (Dep 4493) published when it became an agency was not renewed after the initial three years as HMSO became involved in the Prior Options Review process. In 1993 Mr Waldegrave stated that he was commissioning a consultancy study to explore the scope for further commercialisation of the operations of HMSO.<sup>9</sup> The terms of reference for the study were deposited in the Library,<sup>10</sup> but the study by Binder Hamlyn was never made public on grounds of commercial confidentiality.<sup>11</sup> During the debate on 18 March 1996 (see below) Robert Jackson, former Parliamentary Secretary at the OPSS, said that the privatisation of HMSO had been reviewed in the Treasury in 1991 and in the OPSS in 1992. Both reviews had concluded against privatisation,<sup>12</sup> but Mr Jackson said that the decision had been finely balanced.

In 1993 John Garrett MP questioned William Waldegrave, then Chancellor of the Duchy of Lancaster, in the Treasury and Civil Service enquiry on the Civil Service on the feasibility of legislation to abolish HMSO (Q1066-1079).<sup>13</sup>

1066. You will excuse me if I ask some matters of constituency interest because I have got the headquarters of HMSO in my constituency. I have got here the terms of reference for a study of the future of HMSO to go out to consultants. You say here, "The review should consider the options of abolition, privatisation, flotation, trade sale, and contractorisation by means of market testing for all of HMSO's functions, individually, in groupings as appropriate and collectively". What is your jurisdiction in this matter? Is it not Her Majesty's Stationery Office founded by Royal Charter in 1786, and is it yours to abolish?

(*Mr Waldegrave*) Parliament can decide that that function is no longer needed, yes. The thing you read out is the ordinary three or four year assessment of an agency at its periodic review. There is nothing specifically special in relation to

the HMSO in it. It is part of the process of agencies, as you know, that from time to time they are reviewed to see whether the functions are still necessary and so on, to see, whether they are being carried out or whether they should go on in the agency format. I think the HMSO has been through two previously in which its agency function was confirmed.

1067. My constituents tell me different. They say this is something quite different, and that this is terms of reference for a commercialisation study, not a regular review. That is what it is headed anyway.

(*Mr Waldegrave*) Yes, I told the House that, That was in answer to the House, that we need to see in this activity (which is fundamentally a commercial publishing business, meeting the special

<sup>8</sup> HC Deb Vol 268 c.32W. See below for the latest HMSO accounts

<sup>9</sup> HC Deb Vol 225 27/5/93 c.664W

<sup>10</sup> Proposed study into the Scope for Further Commercialisation of HMSO, HMSO May 1993 Dep 9421

<sup>11</sup> HL Deb Vol 559 15/12/94 c.133WA

<sup>12</sup> HC Deb vol 274 18/3/96 c.101

<sup>13</sup> HC 27-I 1993/94

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needs of Parliament and others in certain respects) whether it is doing that job as well as it can. That is absolutely right.

1068. The abolition of HMSO is a option that you would consider?

*(Mr Waldegrave)* The complete checklist is used in the case of every single agency at every single review. I find it extremely unlikely that since HMSO has been twice reviewed in this way that there would be any case for abolition.

1069. You could supply us with terms of reference for other studies which were couched in exactly the same terms?

*(Mr Waldegrave)* The format of agency studies is just the same.

1070. In my career I have seen hundreds of these documents for consultancy studies in government organisations, whether it is British foreign governments, the World Bank or whatever, and actually succeeded in winning a few of them. I have never seen such a shoddy document for such a major issue. First of all, it is six paragraphs which seems to me to give, whoever carries out the study, complete freedom without any steer from you or your office at all. It also interests me that you say it will take into account the views of the management of HMSO and those of the Treasury and the Cabinet Office. So the views of the employees will not be sought. Even more surprisingly the views of customers will not be sought.

*(Mr Waldegrave)* As a matter of fact I think it has been made very clear that any report produced will be discussed with the trades union representatives and others at the HMSO.

*(Mr Mottram)* I think that the Controller of HMSO actually circulated to all the staff an explanation of why the study was being conducted.

1071. Not the terms of reference, of course?

*(Mr Mottram)* I do not know whether he did or did not.

1072. No, he did not.

*(Mr Mottram)* Fine, he did not in that case but I am sure that if they ask he would circulate them. We have made them available and they are not secret. He made it clear in that piece of paper that staff would indeed be consulted. Perhaps I could also say I think the study is being done under the direction of the steering group headed up by the Deputy Chief Executive of HMSO, and Mr Waldegrave's department will also be involved in that, so there is plenty of input from those who are running the business now to ensure that this study produces a set of options which are sensible.

1073. Surely it is customary for steering groups of such studies, at least ones I have been used to, to have representatives of staff on the steering group?

*(Mr Waldegrave)* I do not believe so for this kind of operation. no.

1074. This operation is special, is it?

*(Mr Waldegrave)* No. I do not believe that similar consultancies in relation to other agencies have, but I can check that if you like.

1075. There would be no particular difficulty in introducing legislation to abolish HMSO?

*(Mr Waldegrave)* I think it is extremely unlikely that anyone should want to do so when, as I have said before, it is essential for Government to consider the option of whether functions, for which the taxpayer is paying, need still to be carried through. There are steady pressures for the expansion of government, and the Government has to try and lean against that by looking from time to time at the continuing functions to see whether they are still necessary. That is the format not just for HMSO but for all agencies. and indeed for other functions of government.

## C The announcement of privatisation

In a Press Notice on 27 September 1995 Roger Freeman, Chancellor of the Duchy of Lancaster, announced that the Government intended to appoint financial advisers to consider

urgently the options for the future of HMSO, including privatisation.<sup>14</sup>

In a written answer of 17 October 1995 Roger Freeman, announced that he had appointed Coopers and Lybrand as consultants to advise with a view to privatisation:<sup>15</sup>

#### Agencies

**Sir Sydney Chapman:** To ask the Chancellor of the Duchy of Lancaster what are the Government's intentions for HMSO and the other agencies for which he is responsible.

**Mr Freeman:** I have appointed Coopers and Lybrand to consider urgently the options for the future of HMSO, with a view to privatisation provided that satisfactory arrangements can be made for the future provisions of services to Parliament. The future of HMSO has been uncertain for too long and I am anxious to set in place quickly arrangements which will secure the long-term interests of the taxpayer as well as HMSO's staff and customers, among whom Parliament is particularly important. I believe that these interests are most likely to be secured by privatisation of all but a very small part of HMSO. Consultation is under way with the House authorities about the safeguards necessary to ensure the future provision of the services which Parliament receives from HMSO. I shall be making an oral statement to the House as soon as these consultations are sufficiently advanced and we have received advice from our financial advisers and decided on the way forward.

On 28 November the Speaker wrote to Tony Newton, Leader of the House, to express concerns about the future provision of printing services to Parliament, after discussion with the House of Commons Commission:<sup>16</sup>

**Mr. Patrick Thompson:** To ask the right hon. Member for Berwick upon Tweed, representing the House of Commons Commission, what consideration the House of Commons Commission has given to the possible safeguards that might be required to protect the future provision of printing services to Parliament in the event of the privatisation of HMSO. [4901]

**Mr. Beith** [*holding answer 6 December 1995*]: After careful considering of the possible safeguards that might be required to protect the future provision of printing services to Parliament in the event of privatisation of HMSO, the Commission agreed the following reply which Madam Speaker has sent to the Lord President of the Council and Leader of the House of Commons:

You wrote to me on 19 September to notify me of the Government's plan to privatise Her Majesty's Stationery Office, and to ask me what safeguards might be required to enable the House to continue

its agreement with HMSO after privatisation. Before sending this reply, I have, as you know, consulted the Finance and Services Committee and my colleagues on the House of Commons Commission. We have also taken the advice of the House officials most directly concerned.

Although the services of HMSO are important throughout the public sector, they are of particularly vital significance to the House of Commons. Unlike Government Departments and agencies, the House places continuous daily demands on HMSO's printing services whenever it is in session. The timely production of the Order Paper, Hansard, bills and other documents---to very tight timetables and generally overnight---is essential to the transaction of parliamentary business: without the necessary documents, the House and its committees simply could not function.

Against this background, you will understand that I and my fellow Commissioners have concerns

<sup>14</sup> Cabinet Office press release 27/9/95, "Roger Freeman announces possible privatisation of HMSO"

<sup>15</sup> HC Deb 17/10/95 c.193W

<sup>16</sup> HC Deb vol 268 11/12/95 c.455-457W

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about the possible consequences, both short and long-term, of privatising a public sector organisation which has, in general, given good and reliable service to the House for most of this century. Our principal concerns, and the safeguards which we think necessary to meet them, may be summarised as follows:

- (i) For some time to come the House will continue to be dependent on the Parliamentary Press in South London, with its trained and experienced staff, to ensure the overnight printing of documents to the timetables and standards which we have come to expect. This is a costly facility, and there must be some anxiety that a private sector owner would be tempted to experiment with cheaper methods for providing the service, not appreciating the unpredictability of the House's requirements and the large variations in parliamentary workload that can be experienced from one year (and even one week) to the next. We would therefore be seeking an absolute guarantee that the overnight production facilities in inner London will be retained for as long as the House continues to consider them necessary.
- (ii) Staff of the House (the Editorial Supervisor of the Vote and his team) currently work alongside HMSO employees in the overnight compilation and preparation of the Vote Bundle. We would need a guarantee that adequate space and facilities in the Parliamentary Press will continue to be made available to those staff for as long as the House requires.
- (iii) The House's documents and the procedural rules which underpin them, are complex. HMSO staff and management acquire experience and knowledge of those complexities as they progress from job to job in the organisation; and they are brought up in the tradition that in all circumstances the requirements of Parliament are paramount. We are concerned that a private company might seek to economise by employing less experienced staff or by appointing new managers who would not have the same

appreciation of the House's needs. We would therefore be looking for an assurance that there will be substantial continuity in the stating and management of the relevant sections of HMSO after privatisation, and adequate training for any new staff.

- (iv) For similar reasons we seek an assurance of prior consultation with the House before any significant changes are made in the management or organisation of HMSO's directorate of Parliamentary and Statutory Publishing.
- (v) At present, as an Agency, HMSO is under ministerial oversight and a minister is ultimately answerable to the House in the event of a failure in its services. After privatisation, that line of accountability will be broken. The House authorities will be responsible for contracting with the privatised company for the provision of printing and publishing services, but will not be in a position to account directly for a failure on the company's part to meet the requirements of the contract. We therefore think it essential that there should be an identified individual within the privatised Stationery Office who is responsible for the account with the House and acknowledges an obligation to account to the authorities and committees of the House on all aspects of the service being provided.
- (vi) The House has negotiated, and with the Commission's approval is on the point of concluding, a new Supply and Service Agreement (SSA) with HMSO. This agreement provides for a detailed specification of service standards, delivery schedules and related technical details. These specifications should, at least, maintain existing standards, and no attempt should be made to water them down after privatisation, without agreement with the House authorities.
- (vii) Similarly, we consider that any prospective purchaser of the Stationery Office should be required to accept the agreed principles which are set out in the SSA, particularly so far as they concern the rights of the House to regulate the production and reproduction of its documents, both in paper and electronic form.
- (viii) The first annual financial settlement under the new SSA will come into effect on 1 January 1996. Among other things, it provides for substantial reductions in the sale price of many

House publications, including Hansard. This is an objective to which I, and many Members of the House, have attached great importance for some time; and it has been achieved without any significant increase in the payments to be made to HMSO by the House. Further improvements should follow from increasing use of new technology. Any prospective purchaser of HMSO should therefore be required to guarantee that it will not seek any increase (in real terms) in the charges paid by the House or the level of prices to the public above those negotiated for 1996, and that the House will be credited with a proportionate share of future savings arising from technological advances.

Roger Freeman's press statement on 27 September indicated that the Government's decision to privatise HMSO was conditional on satisfactory arrangements being made for the future provision of services to Parliament. Before deciding whether or not that criterion has been met, the Commission will need to be assured that the safeguards and guarantees which I have outlined in this letter are capable of being enforced, not just in the immediate aftermath of privatisation but over the longer term. In that connection we are particularly concerned at the possibility that an initial purchaser might subsequently wish to break up the business by partial sales. Fragmentation of the organisation, or sale to an overseas buyer, could pose serious, and perhaps unacceptable, problems for the House. We would like to know what mechanisms the Government proposes to guard against that possibility.

Assuming the Commission and the House can be satisfied on these points, it will be necessary to convert the SSA and the new safeguards, together with the service specifications and the settlement on prices and charges, into formal contracts which will take effect on privatisation. This is a complex and exacting task for the small team of House officials involved, and professional and legal support will probably be required. Every effort will be made to progress this work in accordance with the Government's programme for the sale, which I understand is aimed at completion in July next year; but we cannot at this stage be at all confident that it will be possible to resolve all the issues before that deadline. We therefore request that, if it proves to be necessary, the Government's timetable for the sale of HMSO, should be adapted to the progress of preparatory work, rather than the other way round.

In this letter, I have set out the views of the Commission, which has statutory responsibility for the House's services. But we also agreed that the House as a whole should be given an early opportunity to express its opinion on the Government's proposals. That debate might best be based on a prior ministerial statement. I am therefore copying this letter to the Chancellor of the Duchy of Lancaster. A copy goes also to the Lord Chairman of Committees in the House of Lords.

In response, Roger Freeman, Chancellor of the Duchy of Lancaster sought to reassure the Speaker that HMSO staff would transfer to the new employer who "would have every interest in maintaining the best possible relationship with the House". He noted as follows:<sup>17</sup>

The agreement between the House and the privatised Stationery Office would be an enforceable, legally binding contract. Ultimately, the content of that contract is for the House to decide, although the Government would be happy to offer advice.

The contract terms could make it clear that local overnight production facilities together with space and facilities for the staff of the House are required. The transfer would be subject to TUPE and therefore staff and management of the existing HMSO would transfer to the new employer. In addition, the contract could specify that it is dependent on the provision of properly trained staff. It would be quite normal to include a requirement for prior consultation in the event that significant changes to management or organisation are planned. It would also be quite usual, I think, for there to be a named senior individual responsible for the contract and for the relationship with the House. The Supply and Service Agreement would be the foundation of the contract, with the advantage that the minimum standards it establishes would

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<sup>17</sup> HC Deb vol 268 6/12/95 c.255W

be enforceable at law.

I would expect the examination of prospective purchasers to include an evaluation of their intentions and understanding with regard to the services which they will be supplying to the House. The rights of the House in respect of the production and reproduction of its documents will be made explicit in the contract. I see no difficulty whatsoever in building on the financial arrangements of the new Supply and Service Agreement in order to ensure that the House continues to benefit from the negotiations which have been so recently completed.

You raised the question of the possible future fragmentation of the organisation or sale to an unacceptable buyer. The Government intends to seek a buyer for the whole business and that buyer will have to be acceptable to key customers and in particular to the House. If, after the sale, the buyer sought to sell on to another party or sought to break-up the business the House could be protected both commercially and contractually. The contract could include the right to terminate on a change of supplier status; and commercially, of course, a considerable part of the value of the business would lie in the contract with the House. An owner who put this at risk would soon find that he had devalued what he wished to sell.

A new supply and service agreement was in fact concluded between HMSO and the House to take effect on 1 January 1996:<sup>18</sup>

**Parliamentary Papers**

**Mr. Patrick Thompson:** To ask the right hon. Member for Berwick upon Tweed, as representing the House of Commons Commission, if discussions have yet been concluded on a new long-term agreement with Her Majesty's Stationery Office for the printing and publication of House documents, as referred to in his written answer of 17 May 1995, *Official Report*, column 237; and what the consequences of that agreement will be for the sale prices of *Hansard* and other House papers. [4090]

**Mr. Beith:** The Commission has now approved the terms of a new supply and service agreement between the House and HMSO, which will take effect on 1 January 1996. As a result, the House will no longer purchase its documents from HMSO at the face price but instead will make block payments based on production costs. The level of these block payments will be re-negotiated annually, in accordance with principles set out in the agreement. In calendar year 1996 the block payments will total £11,969,000, which is broadly similar to the total sums paid to HMSO by the Vote Office and other House Departments in respect of the documents in question in each of the previous

two years.

The financial settlement for 1996 also provides for the following reductions in the sale price of House documents:

Daily *Hansard*: £5 instead of £7.50

Select Committee Reports: 20 per cent. reduction on current price scales

Bills: 10 per cent. reduction on current price scales

Weekly Information Bulletin: £1.50 instead of £2.30

Standing Committee *Hansards* will in future be priced on a scale according to page content, with a maximum price of £5 compared with the current fixed price of £7.50.

The reduction in the price of the weekly *Hansard* from £22 to £12, which was announced in my answer of 17 May and came into effect on 6 June, will continue to apply.

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<sup>18</sup> HC Deb Vol 268 6/12/95 c.255W

The supply and service agreement is not however legally enforceable.

In evidence to the Finance and Services Committee on 21 November 1995,<sup>19</sup> Roger Freeman had stated that he would deliver to the Committee clerk in February 1996 an information memorandum which would begin the process of inviting companies to tender for ownership of the business. The document would be commercially confidential (Q2). A commitment to provide the document to the clerk of the Lord's Offices Committee was also made.<sup>20</sup>

Mr Freeman stressed that it was for Parliament to decide the nature of its relationship with HMSO and a privatised successor body, and that if it was for Parliament to decide on the future administration of Parliamentary copyright, currently administered by the Queen's Printer. The Commons and the Lords would be in a position to draw up legally enforceable contracts with a privatised stationery office. Parliament would be very closely involved in the selection of the new owner because of the importance of this business to a privatised stationery office:- Mr Freeman noted, 'First of all we could not, and we would not wish to, formally privatise the Stationery Office, that part of HMSO which we wish to transfer to the private sector, without the agreement frankly of the House of Commons in terms of the service it provides to the Commons and the same with the Lords' (Q17).

It was envisaged that senior clerks from the Lords and Commons would be observers on the Steering group handling privatisation (Q19). In response Archy Kirkwood stated 'I do not believe that it is sufficient to take the view of Parliament as simply the powers through the Finance and Services Committee endorsed by the Commission as the House's view of this. This is an important House of Commons matter and I am certainly not prepared to take responsibility on myself for this decision without going to the House of Commons' (Q37).

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<sup>19</sup> HC 97 Session 1995/96

<sup>20</sup> HL Deb vol 568 18/1/96 c.755

The Lords Select Committee on the House of Lords Offices issued a report on 12 December 1995<sup>21</sup> which examined HMSO privatisation amongst other topics concluding:

#### 5. HMSO privatisation

The Committee took note of the Government intention to privatise Her Majesty's Stationery Office provided that satisfactory arrangements can be made for the future provision of services to Parliament and agreed that extensive safeguards would be necessary to protect the House's interests. Similar safeguards were being sought by the House of Commons' Commission for that House.

In any arrangements for privatisation, safeguards should be sought to secure the following:

1. Confidence that the business of the House will not be interrupted. This will require:
  - (a) adequate time for the preparation of one or more tightly drawn contracts;
  - (b) an assurance that overnight production facilities in inner London are retained for as long as the House continues to need them;
  - (c) sufficient continuity in the senior management of the relevant sections of the Stationery Office to ensure that the House's needs are understood;
  - (d) one or more individuals in the privatised Stationery Office who are answerable to the House for the service provided;
  - (e) alternative emergency arrangements for overnight printing in the event of the failure of contractors.
2. A publication regime which protects the interests of Parliament and does not leave the pricing of its publications to commercial interests. This should include a guarantee that a privatised Stationery Office will not seek any increase (in real terms) in the rates of charges paid by the House or the level of prices to the public above those negotiated for 1996 and that the House will be credited with a proportionate share of future savings arising from technological advances. It would be desirable to achieve a progressive reduction (in real terms) in the cost of Lords papers.
3. A requirement, on any prospective purchaser of the Stationery Office to accept the substance of the provisions of the new Supply and Service Agreement between the House and HMSO, including the maintenance of existing service standards and delivery schedules and the rights of the House to regulate the production and reproduction of its documents in both paper and electronic form.
4. The administration of Parliamentary copyright, and the function of Queen's Printer of Acts of Parliament, not to be transferred to the private sector.

The Committee noted that alternative arrangements would have to be made by the House to replace its "intelligent customer" function, now performed by HMSO. This will probably require recruitment of staff by the House, to make good its competence to conduct dealings with the private sector and to commission work.

There should be a debate in the House, for the House to express its opinion on the Government's intentions to privatise HMSO.

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<sup>21</sup> HL Paper 12 Session 1995/96

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The Offices Select Committee of the Lords is considering the detailed arrangements for a contractual relationship between the Lords and a privatised HMSO.<sup>22</sup> On 13 December 1995 Mr Freeman made a statement to the House on the future of HMSO.<sup>23</sup>

A debate on the adjournment took place a few days later on 18 December 1995.<sup>24</sup> Mr Freeman was pressed by the Conservative Sir Patrick Cormack MP to consider separating out the work for Parliament and retaining it in the public sector.<sup>25</sup> However the Chancellor agreed that the existence of a legal contract would offer greater Parliamentary control:<sup>26</sup>

**Mr. Tam Dalyell** (Linlithgow): The Minister said that Parliament could control the business better. What methods does he have in mind to ensure that?

**Mr. Freeman:** I explained to the House that, for the first time in the history of the relationship between Parliament and Her Majesty's Stationery Office, there is now a formal service agreement. That was signed last week and it will come into effect on 1 January. There is a similar agreement with the other place. It is envisaged that the authorities of the House will enter into a formal contract on behalf of the House with the supplier of those services, in the same manner as many other services to the House-which perhaps are not as significant, but which are subject to normal commercial contracts. I believe that the existence of a public document that specifies the nature and the quality of services, together with the price of those services, presents a better mechanism through which the House can control the supply of the services.

He stated that the commercial freedoms that HMSO would need to compete in the private sector were incompatible with remaining in the public sector. For the Opposition, Derek Foster highlighted potential extra costs for House authorities and doubted whether a contract could be concluded to meet the privatisation timetable as that it was essential for the Government to allow a vote on the privatisation in both Houses.<sup>27</sup> Other Members raised concerns about the security of documents.

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<sup>22</sup> HL Deb vol 568 18/1/96 c.705-706

<sup>23</sup> HC Deb vol 268 c.989-1001

<sup>24</sup> HC Deb c.1272-1320

<sup>25</sup> HC Deb c.1275

<sup>26</sup> HC Deb c.1275

<sup>27</sup> HC Deb c.1286-88

The future of HMSO has been debated again in the Commons on 18 March 1996<sup>28</sup> and in the Lords on 18 January 1996.<sup>29</sup> In the Commons debate, which arose on an Opposition motion, Mr Freeman reiterated his belief that HMSO would inevitably contract its work and workforce unless privatised. John Garrett, with a constituency interest in Norwich, argued that HMSO had the potential to win public sector business abroad with the recent relaxation in trading fund status (c.85). Mr Freeman considered it important that HMSO should have the ability to compete in the private sector for private sector work.<sup>30</sup>

**Mr. Lloyd:** Until the regulation change, I was sponsored by the Graphical, Paper and Media Union; I do not want there to be any doubt about that. Can the Minister explain to the public why the Government have an ideological blind spot in that, when privatisation occurs, HMSO can compete even though it will almost certainly be at the expense of pensions and other working conditions of the people there, yet the Government will not allow the rosy future for HMSO advocated by many people inside and outside the House if it is given commercial freedom? Why cannot HMSO be allowed to compete properly in the public sector?

**Mr. Freeman:** We hold it as an important tenet that a state-owned company such as HMSO has three clear advantages. First, it borrows at the gilt rate and not at the commercial rate. Secondly, it does not pay corporation tax whereas private sector companies do. Thirdly, it has the guarantee of the Treasury-of the state. It cannot go bankrupt; it cannot go bust.

**Mr. Garrett:** Can't it?

**Mr. Freeman:** As a state-owned company, it cannot- *[Interruption.]*

Mr Freeman also gave some further details on the sale of HMSO [c.89]:

**Mr. Freeman:** I am confident that, with a successful transfer to the private sector, such investment will occur.

I am happy to reiterate my earlier undertaking that the Government will seek a single buyer for the whole business and will not in any circumstances separate HMSO's printing and

**Madam Deputy Speaker:** Order. There is an unwelcome tendency for sedentary interventions. They have been made this evening by hon. Members on both sides of the Chamber. I should like them to stop.

**Mr. Freeman:** In our belief, it is important that HMSO-the Stationery Office, as it will become in the private sector-has the ability to compete in the private sector for private sector work. It is important that that should occur on fair terms with other private sector companies because they will lose existing work to the Stationery Office if it can compete for and win business. At present, Government Departments are untied from HMSO so they can procure their printing and publishing requirements from the private sector-and they are doing so. That is one of the reasons for the contraction in HMSO's total business.

publishing operations at the point of sale. All bidders will be subjected to a rigorous assessment of their ability to meet customers' needs and of their plans for the business and its staff.

I cannot envisage circumstances in which a buyer would wish to move the organisation away

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<sup>28</sup> HC Deb vol 274 c.77-124

<sup>29</sup> HL Deb vol 568 c.705-760

<sup>30</sup> HC Deb c.86-87

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from Norwich. For the avoidance of doubt, I now confirm that such a buyer would be expected to maintain its presence in Norwich. The House will be aware -*[Interruption.]*

**Mr. Tam Dalyell** (Linlithgow): Does this not encapsulate the root of the trouble? The Minister may stand there, doubtless in good faith, believing what he is saying. However, in no way can he guarantee the actions of future Parliaments or future Governments. Do not such pledges have to be enshrined in law?

**Mr. Freeman:** I was referring specifically to HMSO's presence in Norwich. As the House and any prospective business purchaser would assume, the operations of HMSO are represented in Norwich. In due course, we will publish the shortlist of bidders for the Stationery Office. I know that hon. Members will wish to understand precisely what is proposed not only by those on the shortlist generally but by the preferred bidder.

Mr Freeman once again argued against the possibility of separating out the work for Parliament in the South London press and retaining that press in public sector ownership, and noted that the concerns expressed by the Speaker in her letter of 28 November would be incorporated in the draft contract: 'in particular the draft contract provides that the House has the right to terminate it upon any change of ownership of the privatised business. The importance of Parliamentary work to the business is such that no prospect owner would buy it unless Parliament's custom was assured, so this part of the contract amounts to an effective veto on changes of ownership' (c.90). Ten per cent of HMSO however, represents business done with Parliament (c.92). He stressed again that it was for the House of Commons Commission to consider the draft contract between a House and a prospective buyer, and for the Commission to decide how the matter would be approved (c.92).

Derek Foster, for the Opposition, argued that the House should have an opportunity to vote on the issue, and that such major changes needed proper consideration and raised concerns about accountability to the House after privatisation (c.77-82). For the Liberal Democrats Chris Davies said that he could not understand 'how selling a profitable, efficient organisation benefits the public' (c.100). Robert Jackson argued that the essential case for retaining HMSO was the case of collective bulk purchase which formed the largest part of HMSO business (c.101). Sir Patrick Cormack expressed concerns that unless Parliament kept control of its own printing its efficient production could not be permanently guaranteed (c.109).

Peter Mandelson, for the Opposition argued that the Commission's concerns expressed in the Speaker's letter of 28 November would not be met (c.114):

Last, the Commission expressed a desire to see no increase in real terms in the charges paid by the House or the prices paid by the public. I suggest that that matter touches on the main issue under debate tonight. For, once transferred to the private sector, market forces will take over, whatever the Minister says or tries to claim in the debate tonight.

Parliament's influence over charges and prices, like everything else, will quickly fall away and be finished for ever. More fundamental and crucial in this debate, supplying the House with the papers that it needs at the time of its choosing and in the exact place that it requires cannot be determined by market forces or the power of commercial

competition. That recognition is at the root of our disagreement with the Government's privatisation proposal.

If ever there was a definition of public service, it is surely providing the essential wherewithal Parliament needs to carry out its business. The Minister is astonishingly cavalier about that; he can offer neither the satisfactory arrangements we need nor the power to enforce them. When the choice arises between meeting the requirements of Parliament, which are often costly, sometimes immediate and almost always have to be met under pressure, and meeting the demands of equally insistent commercial customers, where will the loyalty and commitment of the privatised HMSO lie?

For the Government David Willetts said that the Government had submitted a draft contract to the Commission, prepared to meet the Speaker's concerns, which the Commission could consider, but it was for the Commission to satisfy itself that its requirements had been met [c.118]. The Opposition motion to postpone privatisation was lost by 289 votes to 249.

In the Lords Debate on 18 January 1996 (which arose on a motion moved by Lord Cranborne, the Leader of the House) Lord Jenkin of Roding drew attention to industrial relations difficulties at HMSO in 1979 which had threatened to disrupt supplies to Parliament.<sup>31</sup> Most other speakers in the debate expressed serious doubts about the proposals. There was pressure to hold a full debate on a new contract between the Lords and a private sector supplier [c.756-758].

In a Written Answer on 25 March 1996,<sup>32</sup> Mr Freeman said that he could offer no guarantees on future staffing levels, and although he could not envisage circumstances where the new owners would undertake relocation he would not wish to pre-empt the commercial judgment of the new owner. A list of current HMSO service level agreements with government departments was given in a Written Answer<sup>33</sup>

## D. HMSO Accounts

The Trading Fund Accounts for 1995 were published on 29 April indicating a loss of £39.7m. More than half of the losses were accounted for by the provision of £26.1m towards the costs of a redundancy programme before privatisation, but most attention focused on a loss on a contract to sell books and stationery to Uzbekistan entered into by officials at HMSO

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<sup>31</sup> HL Deb Vol 568 18/1/96 c.734-735

<sup>32</sup> HC Deb Vol 274 c.448

<sup>33</sup> HC Deb Vol 275 1/4/96 c.16-17W

Scotland. The Comptroller and Auditor General commented upon the contract in his report on the accounts.<sup>34</sup>

### Conclusions

30. Trading in international markets for the first time presents new and unfamiliar risks. In the case of HMSO's trade with Uzbekistan, there were several failures which served to increase its exposure and increase the level of potential losses. In particular:

- HMSO did not take adequate steps to establish Uztoshkitob's authority to enter into the agreement and make payments in United States dollars as required under the contract;
- the contract was in the form of a simple purchase order and did not contain many of the elements that would normally be expected in a contract of this type;
- HMSO did not take appropriate and timely legal advice on the status of its contract with Uztoshkitob;
- HMSO entered into commitments to purchase goods and ship the initial consignments to Uzbekistan without having letters of credit as required under the contract;
- despite the problems in obtaining payment from Uztoshkitob, HMSO continued to ship consignments; and
- HMSO's Executive Committee exercised insufficient control over the contract.

31. Following the involvement of the Foreign and Commonwealth Office and the Chancellor of the Duchy of Lancaster, prompt action was taken to try to resolve the problems with the contract and to secure the best value that could be obtained from the consignments. However, the outcome remains uncertain and the net loss to the taxpayer could be substantial.

The *Financial Times*<sup>35</sup> reported Ministers and officials insistence that difficulties over the deal would not affect the privatisation, at an expected sale price of £140m.

*Scotland on Sunday*<sup>36</sup> reported that HMSO Scotland had now reached agreement with the Government of Uzbekistan over the outstanding bill of £6.5m. The PAC has heard oral evidence from HMSO on 10 June on the Uzbek scheme which has not yet been published.

Mr Freeman confirmed that there were no plans to end the long-standing subsidy to public libraries which means that they receive a 50 per cent discount on official publications. The subsidy would continue to be administered from within the residual body HMSO,<sup>37</sup> which would remain in the public sector.

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<sup>34</sup> HMSO Trading Fund Accounts 1995 HC 349 Session 1996/97

<sup>35</sup> 30/4/96 "HMSO Sale hit by loss of millions"

<sup>36</sup> 9/6/96 "Botched HMSO deal settled"

<sup>37</sup> HC Deb Vol 273 6/3/96 c.251W

## E. Bidders for HMSO

On 26 March the Office of Public Service issued an advert seeking indicative offers from prospective purchasers. The full information memorandum was made available to potential bidders who satisfied the pre-qualification process and was passed on a confidential basis to the Clerk of the Finance and Services Committee. An edited version of the information memorandum was deposited in the House<sup>38</sup> excluding commercially sensitive information.

On 22 May Mr Freeman announced that four organisations had been short-listed to bid for HMSO.<sup>39</sup>

### Her Majesty's Stationery Office

**Mr. Patrick Thompson:** To ask the Chancellor of the Duchy of Lancaster if he has reached a decision on the short-list of bidders for HMSO. [30789]

**Mr. Freeman:** HMSO was advertised for sale in March, and a large number of organisations expressed interest in the sale. We subsequently received 14 indicative bids, and I am pleased to announce that the following parties have been short-listed:

an independent consortium backed by Mercury Asset Management, 3i and Capita;

a Hambros consortium;

National Publishing Group, a consortium led by Electra Flemming;

Westminster Information System, led by NatWest Ventures.

Each of these will now prepare final bids based on detailed information about HMSO and discussions with its management and staff.

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<sup>38</sup> HC Deb Vol 275 3/4/96 Vol 275 c.225W, Dep 3218

<sup>39</sup> HC Deb Vol 278 22/5/96 c.191W

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The bids are for the whole business and would retain the presence in Norwich. According to the accompanying Press Notice from the Cabinet Office<sup>40</sup> "each bidder will enter a 'due diligence' information gathering process, as a result of which they will prepare final bids, probably in early July. These bids will again be evaluated before the Government reaches a decision on its preferred bidder. Negotiations with that bidder will then precede the formal sale. The privatisation remains on target for completion later this year."

On the same day Alan Beith, for the House of Commons Commission, announced that a draft contract had been prepared by the House's legal advisers and had been approved by the Commission for release to the short-listed bidders. A copy of the draft excluding commercially confidential financial provisions would be deposited in the Library on 4 June. Mr Beith noted "The Commission considers that the draft contract provides the safeguards stipulated in the Speaker's letter of 28 November 1995 to the Lord President of the Council. The provisions of the draft contract are not subject to negotiation with the short-listed bidders".<sup>41</sup>

The draft contract<sup>42</sup> is between the Corporate Officer of the House of Commons and the Stationery Office Ltd (after privatisation). The *Parliamentary Corporate Bodies Act 1992* designated the Clerks of both Houses as Corporate Officers, to form the legal persona for contracts etc. The company is required to maintain the existing printing facilities at HMSO Parliamentary Press and operate a Parliamentary Liaison Office [para 11.1]. There are provisions for dealing with the interruption of printing services, for preserving confidentiality, intellectual property rights disputes, and termination of the agreement. The documents to be published and distributed by the privatised company are set out in Schedule 6 [Vote Bundle, the Official Report of Debates, (including Standing Committees), Select Committee Reports and Minutes, Bills, Weekly Information Bulletin and Sessional Information Digest, Journal of the House of Commons, documents in the House of Commons Library Document series, and documents in which the House of Commons owns the copyright and instructs the company to publish. The last three categories do not form part of the core Printing Services set out in the draft contract].

A contract for the House of Lords is in its final stages of drafting, and will shortly be submitted to the Offices Select Committee; this Committee will report to the House and a debate on its report is expected.

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<sup>40</sup> 22/5/96 Roger Freeman announces short-list of bidders for HMSO

<sup>41</sup> HC Deb Vol 278 22/5/96 c.191W. The House of Commons Commission is a statutory body of six Members established under the 1978 House of Commons (Administrative) Act

<sup>42</sup> Dep 3435 Draft Agreement for Printing, Publishing and Other Services

It is worth noting that recent developments in electronic printing have already reduced the dependence of Official Report (Hansard) on HMSO as the printer since direct inputting of transcripts reduces the need for typesetting and composition by an external printer.

Canada and New Zealand have privatised their equivalents of HMSO. The sale of the New Zealand Government Printing Office was complete in 1990, but according to the *Bookseller*<sup>43</sup> a Parliamentary enquiry found in 1992 that the sale had been effected at too low a price. The sale followed years of uncertainty about the GPOs future. However, the *Bookseller* reported that speed and efficiency had been improved after the sale, and the cost to Government restructured. In Canada the Canada Communications Group (formerly the Queen's Printer) was restricted on business lines in 1990. In March 1995 the Government announced plans for the privatisation of CCG, but months of uncertainty followed about the details of the sale. According to the *Ottawa Citizen* 2/3/96 the Government has decided to retain core services, and keep in-house the editing and the composition of the Canada Gazette and the administration of Crown Copyrights. Final plans were announced in May and bids are currently being evaluated. Buyers will have special access to federal contracts for five years.<sup>44</sup>

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<sup>43</sup> 31/5/96 The fight for New Zealand's HMSO

<sup>44</sup> *Ottawa Citizen* 23/5/96

## II The privatisation plans

As set out in a written memorandum from Roger Freeman, Chancellor of the Duchy of Lancaster, to the Finance and Services Select Committee<sup>45</sup> all of HMSO but a small residual body would be privatised. The residual body (to be known as HMSO) would have the responsibility of the Queen's Printer (a title currently held by the Controller of HMSO), the administration of Crown copyright under the Royal Letters Patent and oversight of the London, Belfast and Edinburgh Gazettes. The residual body could administer Parliamentary copyright if Parliament so desired. In oral evidence Mr Freeman spoke of 20-30 civil servants in the residual body (Q.2). The rest of HMSO would be privatised by way of a competitive sale by private offer possibly under the name of Stationery Office, affecting around 2,900 staff.

The memorandum noted that "the best way to privatise HMSO will be to exclude as little as possible and to seek buyers for the whole business.... Nevertheless this does not rule out a disaggregated sale of the whole business." The type of sale envisaged would mean that the buyer would take on the assets and contracts of the existing HMSO and take on HMSO staff under the TUPE Regulations.<sup>46</sup> The memorandum proposed a sale by the summer of 1996, noting that HMSO was constrained by its status from competing for business outside the public sector at a time when its central Government market was shrinking. "In these circumstances there is a real risk that the business will decline unless HMSO can widen its markets. Privatisation will therefore offer the best chance of a healthy and dynamic future for HMSO and its staff".

HMSO currently has a diverse range of functions including

- the administration of Crown Copyright and by agreement Parliamentary Copyright;
- the printing and publishing of legislation;
- the printing, publishing and distribution of Parliamentary and Government material by direct mail and through HMSO shops and agents;
- the supply of paper, stationery, office machinery, furniture and equipment;
- general print procurement and production for other publicity funded bodies;
- security printing and procurement - including passports, girocheques and other documents with a financial value.

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<sup>45</sup> HC 97 Session 1995/96

<sup>46</sup> Research Paper 'The Social Chapter' no. 96/76 pp32-36 sets out the application of TUPE in general terms

Further detail was given in an information pack placed in the Library on 30 November 1995 [Dep 2500] and in the later Edited Information Memorandum Prepared for Parliament [Dep 3218 3/4/96].

As currently organised HMSO has a turnover of over £375m with a staff of 2,900. It historically operated in three main business divisions - Publications, Print and Business Supplies, with regional services in Scotland and Northern Ireland. In January 1995 the Business Services was broken down into four separate business units: Office Supplies, Copiers, Business Systems and Furniture. Similar steps were taken in the Publications and Print Groups, with the Regions also given greater business accountability.<sup>47</sup>

2.14. From the viewpoint of operations and management accountability, there are now thirteen business units (a fourteenth, Print Services Cardiff, will come into operation in 1996):

	<b>Turnover 1995 £m</b>	<b>Staff</b>	<b>Location</b>
<b>Publications Group</b>			
HMSO Parliamentary & Statutory Publishing	37.3	297	London
HMSO Client Publishing	21.6	130	Norwich
HMSO Books Sales & Service	13.0	344	London
<b>Print Group</b>			
HMSO Norwich Print Services	26.0	145	Norwich
HMSO Security Printing & Systems	23.5	175	Manchester
HMSO Manchester Print & Logistics	27.7	220	Manchester
HMSO London Print Services	31.5	252	London and Cardiff
<b>Business Service Group</b>			
HMSO Office Supplies	58.0	344	Norwich and Bristol
HMSO Copiers	50.5	109	Norwich
HMSO Business Systems	45.5	301	Norwich
HMSO Furniture	3.0	16	London
<b>Regional Presence</b>			
HMSO Scotland	27.8	210	Edinburgh
HMSO Northern Ireland	10.5	67	Belfast
<b>Corporate Services</b>			
	-	288	Norwich
<b>Total</b>	375.9	2898	

2.15. Turnover forecasts for 1995 have been taken from the management accounts produced for the ten months to October and include internal sales.

2.16. Finance and Human Resource units are run centrally from the head office in Norwich and provide key services such as payroll. Similarly, the major property responsibilities are centrally managed.

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<sup>47</sup> Dep 2500 HMSO Information Pack 30/11/95

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The main public sector markets for HMSO are set out in an extract from the Edited Information Memorandum of 3 April 1996 [Dep 3218]:

### 2.2 Main markets

Set out in Table 2a is an analysis of HMSO's UK public sector market share in 1994 (market figures are rounded to the nearest £5 million). These figures have been extracted from Key Note, Maurice Palmer Associates and internal HMSO estimates. The Publications Group's markets comprise the Parliamentary market (in which the Group holds a monopoly) and other public sector markets (in which the Group holds varying shares of the markets). HMSO has been unable to estimate the size of the public sector publishing market in value, but management estimates that HMSO publishes 50% of all Government titles. Table 2a therefore shows the figures for market size and share in all HMSO business lines apart from publishing.

<b>HMSO business line</b>	<b>UK public sector £'m</b>	<b>HMSO £'m</b>	<b>HMSO share sector %</b>
Print	405	114.9	28
Office supplies	350	66.1	19
Photocopiers	200	50.2	25
Business systems	2,000	37.0	2
Furniture	200	2.8	1
<b>Total</b>	<b>3,155</b>	<b>271.0</b>	<b>8</b>

HMSO's market share still leaves a significant opportunity, for a potential purchaser to capitalise on HMSO's existing capabilities and target the markets available even with the public sector.

A number of HMSO's customers have market tested their contracts, and HMSO has retained a significant share of these customers.

Some details of the proposals for the residual HMSO were also given:

### 7 Residual HMSO

The name HMSO (Her Majesty's Stationery Office) will remain within Government and be used by a small residual body. The residual body will discharge certain statutory and quasi-statutory functions currently assigned to HMSO or the Queen's Printer. The unit will be headed by the Controller who will also be appointed as the Queen's Printer. It is expected that

the unit will employ 20 to 30 people. Its main functions will be:

- Maintaining control of the Votes for both the Library Subsidy and the supply of publications to Members of the European Parliament
- Administration of Crown and, with the Houses' agreement, Parliamentary copyright
- Procuring the production of Acts of Parliament, certain Statutory Notices, and *The London, Belfast and Edinburgh Gazettes*. Residual HMSO expects to have a contract in place at privatisation with The Stationery Office for production and distribution work as necessary.

The residual body will also discharge the functions of the Queen's Printer in relation to the production and issue of Statutory Instruments. Current practice is for HMSO to undertake around half of the printing work internally, with the remainder contracted out at a bought-in cost of some £200,000 per annum.

However, this matter is under active review and arrangements in this area may change. The resultant level of business accruing to the Stationery Office may rise or fall as a result.

Bids should be based on the assumption that the work currently done in-house would be assigned to the Stationery Office.

If the *Statutory Instruments (Production and Sale) Bill* is passed there will no longer be a requirement that all SI printing be carried out by the residual HMSO, since the Bill will make clear that the printing of SIs can be contracted out under the authority of the residual body. On the other hand, the Bill is necessary even without privatisation of HMSO to confirm the status of existing SIs (see below Part III).

## **A. The privatisation of HMSO - legal position**

According to Government legal advice no legislation is required to privatise HMSO given that a residuary body would be retained in the public sector to carry out the functions of HMSO and Queen's Printer in relation to a series of enactments. Rights to administer Crown Copyright are conveyed by Royal Letters Patent on the Controller of HMSO, a position remaining in the public sector, and this function will remain with the residual body. An affirmative order under s.4(a) of the *Government Trading Funds Act 1973* is, however, required to wind up the HMSO Trading Fund.

In the debate in the Lords on 18 January 1996, Lord Bruce of Donington referred to a Government assurance during the passage of the *Government Trading Act 1990* that primary legislation would be required to privatise a trading fund.<sup>48</sup> In response Earl Howe for the

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<sup>48</sup> HL Deb c.741 The reference is to HL Deb 12/6/90 c.231

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Government said "The Trading Act will not be used to privatise HMSO. The undertaking in 1990 was given in a context when primary legislation was always required for technical reasons associated with the terms on which civil servants would transfer to their new employment. Those short comings have been resolved and there is no need for primary legislation. The 1990 undertaking is not breached because it is not relevant".<sup>49</sup> This is a reference to the *Trade Union Reform and Employment Rights Act 1993*.

The 1991 White Paper *The Citizens Charter* [Cm 1599] had referred to the need for general legislation to deal with transfers of work involving civil servants:

### **Transfers of work involving civil servants**

When work is transferred from the Civil Service into the private sector, it is clearly right that redundancy compensation would only be paid where a genuine redundancy occurs. At the moment, in some circumstances, entitlement to redundancy compensation may technically occur even when employees continue to do the same job, and on the same terms and conditions, following transfer to the private sector.

Previously, separate legislation has normally been introduced in each privatisation to extinguish any possible claim for compensation where civil servants transfer out of the public service but do not lose their jobs. To continue in this way would seriously impede our future plans. New legislation will therefore be brought forward to solve this problem on a permanent basis.

This became s.33 of the *Trade Union Reform and Employment Rights Act 1993*.

In the course of preparatory work on the privatisation of HMSO a review of relevant legislation was undertaken and the deficiencies of the *Statutory Instruments Act 1946* became apparent. The Act clearly required amendment whether or not the privatisation went ahead, and legislation is necessary to confirm the legal status of existing SIs printed by private printers. Even if the whole of HMSO remained in the public sector, contracting out of the printing of SIs would be likely to continue as the volume of work would be unpredictable. Roger Freeman has said that around half the printing is contracted out at present at an annual cost of £200,000.<sup>50</sup> Failure to enact the *Statutory Instruments (Production and Sale) Bill* would not in itself prevent privatisation since the residual body could undertake direct production of statutory instruments, and uncertainty about the legal status of existing SIs would remain unresolved.

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<sup>49</sup> HL Deb vol. 568 18/1/96 c.755. This is a reference to the Trade Union Reform and Employment Rights Act 1993 s.33(5)

<sup>50</sup> *Financial Times* 21/6/96 "Bill is not necessary for HMSO Sale"

## B. Crown and Parliamentary Copyright

By ss. 163-164 of the *Copyright Designs and Patents Act 1988* (cap 48) [CDPA], a work made by Her Majesty or an officer or servant of the Crown in the course of his duties, and Acts of Parliament, are Crown Copyright. Crown Copyright, except where delegated, (eg to the Ordnance Survey), is administered by HMSO, and has been for many years.

By virtue of s.165 of the CDPA the copyright in works produced by or under the direction or control of either House of Parliament are the copyright of that House, vested, for the Commons, in the Speaker. Arrangements for the administration of Crown Copyright was set out in a written answer:<sup>51</sup>

### Crown Copyright

**Mr. Peter Ainsworth:** To ask the Chancellor of the Duchy of Lancaster if he will make a statement on the arrangements proposed for the administration of Crown copyright. [14926]

**Mr. Freeman:** The Government propose to privatise Her Majesty's Stationery Office during the summer of 1996. We shall retain a residual body, which will keep the title "HMSO", to administer Crown copyright and to fulfil certain statutory responsibilities and oversight of the Gazettes. The residual body could also administer parliamentary copyright if Parliament so wished. Irrespective of the privatisation, we intend that administration of Crown copyright should be further separated from official publishing functions.

The residual HMSO will continue to administer Crown copyright with a view to making official information as widely and readily available as possible, taking into account the need to protect the interests of the taxpayer.

The Government will continue the existing arrangements for non-exclusive licensing of Crown material. These include concessionary arrangements for certain educational and non-commercial purposes. The Government will continue the existing policy of allowing secondary publishers, without charge or prior permission and on a non-exclusive basis, to reproduce in value-added print format Acts, statutory instruments and statutory rules and orders. I have decided that this concession should now be extended to electronic and microform formats.

Reproduction in printed format of quasi-legislative material will continue to be licensed on a non-exclusive basis, according to the policy described in HMSO's "Dear Publisher" letter of 6 February 1995, reference QLM/2, and the Cabinet Office circular DEO (PM)(95)4, copies of which have been placed in the Library of the House.

The accompanying Cabinet Office Press Release provided further background:<sup>52</sup>

3. Currently, anyone wishing to reproduce Crown copyright material must obtain a licence, usually non-exclusive, from HMSO's Crown copyright Unit. Such licences are generally readily available but fees or royalties may be payable. An exception is made, however, for Acts and Statutory Instruments, whose reproduction in print has for some years been allowed in a value-added context without charge or prior permission. Mr Freeman's announcement now extends this exception to electronic or microform reproduction of such material.

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<sup>51</sup> HC Deb Vol 271 9/2/96 c.370W

<sup>52</sup> Cabinet Office Press Release 9/2/96 "Roger Freeman announces plans for Crown Copyright"

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Under an agreement made between the House and HMSO in 1989, administration of the House's copyright in respect of works published by HMSO has been administered by HMSO. Administration of copyright in works not published by HMSO has been carried out by the Copyright Officer (Clerk of the Journals), and through him by Departments of the House. Similar arrangements apply in House of Lords.

HMSO make an annual return to the Copyright Officer of the fees, etc. received for licensing applications to reproduce such material: these fees are retained by HMSO, and the work is done by them without charge to the House.

It should be noted that under the CDPA there is some doubt as to whether House of Commons papers printed by order of the House but not emanating from House offices (eg reports of the Comptroller and Auditor-General, accounts of public bodies etc.) are Crown or Parliamentary Copyright.

Officials of the House have been for some time concerned that there might be an actual or potential conflict of interest between HMSO's concerns as a publisher and as a copyright administrator. Under the privatisation proposals, administration of Crown Copyright will be reserved to the residual HMSO, in the public sector (see p[20] above), whereas publishing activities will be the responsibility of Stationery Office Ltd [SOL] in the private sector. Any potential conflict of interest is thus removed. It is expected the House will conclude with residual HMSO a new copyright administration agreement on the basis of definite directions by the House of Commons, and a procurer-provider relationship, with an appropriate annual fee being paid by the House and receipts from any licences granted accruing to the House.

It should be noted that though print-media first publishing services are to be provided to the House by SOL under contract, SOL will have to apply to residual HMSO for permission to reprint in printed form any House document in other than its original form, or to publish or use any such document electronically. The Electronic Publishing Group<sup>53</sup> has recommended that the texts of many Parliamentary documents be published free on the Internet: this apart, any further publication - for instance in a value-added database - would require a licence, which SOL (or any other commercial publisher) would have to obtain from HMSO.<sup>54</sup>

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<sup>53</sup> a body of officials of the House established by the Board of Management in 1995, and chaired by the editor of the Official Report

<sup>54</sup> Information Select Committee First Report: Electronic publication of House of Commons documents HC 328 1995/96. The Committee endorsed the EPG recommendations

### III *Statutory Instruments (Production and Sale) Bill, Bill 156, 1995-96*

This very short bill seeks to rectify, with retrospective effect, an apparently longstanding but unlawful practice by HMSO in contracting out the printing of statutory instruments. This section of the Paper outlines the policy of the bill as explained by Office of Public Service (OPS) background notes, and provides Members with briefing on two aspects of the bill.

#### A. **Background and policy of the bill**

The bill was introduced into the Commons on 20 June, and is due to be debated on 3 July. The OPS briefing note on the bill is as follows:<sup>55</sup>

The Bill is intended to amend the Statutory Instruments Act 1946. This Act imposes directly on HMSO the duties of printing, issuing and selling Statutory Instruments; by contrast, HMSO is permitted by the Documentary Evidence Act 1882 to contract out the printing of other official and legislative material, including Acts of Parliament.

HMSO makes extensive use of contracting out of printing work. This allows considerable savings to be made and cover prices to be held down, and is common practice in the printing industry where (as here) demand is volatile. With the exception of Parliamentary material, all classes of HMSO's output are frequently printed under contract by the private sector. Indeed, HMSO has been contracting out the printing of Statutory Instruments since at least 1965, arguably in technical breach of its statutory functions.

The Bill seeks to remedy the position. It would both confirm retrospectively the status of those existing SIs which have not been printed directly by HMSO and would validate contracting out of such work in the future, allowing savings to be maintained and ending the current anomaly where only SI printing may not be contracted out.

The potential problem was first discovered as part of research into HMSO's statutory functions while options for its future were being evaluated prior to last year's announcement that it was to be privatised. However, the Bill has no connection with privatisation, which will proceed irrespective of its passage. To the best knowledge of OPS, this is the first time the problem has come to light, although there is a background of case law relating in general to the 'printing and issuing' requirements of the 1946 Act (see especially *R. -v- Sheer Metalcraft*, 1954 1QB 586).

Since that time, a number of options for resolving the position have been examined and detailed legal advice taken. The possibility of recourse to the Deregulation and Contracting Out Act 1994 has been rejected on this advice: such a course would not be conformable with the 1994 Act. The Bill was introduced as soon as it was decided that this was the best way to proceed.

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<sup>55</sup> OPS background briefing, June 1996

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The *Notes on Clauses*, being brief, are reproduced in full:

*Clause 1* amends 2(1), 3(1), 3(2), 4(2) and 8(1)(c) of the Statutory Instruments Act 1946 ('the 1946 Act'). The Act provides, *inter alia*, that Statutory Instruments (SIs) shall be printed and sold by the Queen's Printer and issued by Her Majesty's Stationery Office ("HMSO"). It also provides that HMSO shall publish lists showing the dates on which it issued each SI. These lists are to bear the imprint of the Queen's Printer.

The amendments validate retrospectively, and authorise prospectively, the printing, issue and sale of Statutory Instruments by a third party under the authority of the Queen's Printer or HMSO and the reception in evidence of lists of SIs which do not bear the Queen's Printer's imprint.

The clause applies to all SIs to which the provisions amended apply,

### Detail

1. *Subsection 1(a)* amends the 1946 Act so that each reference in it to printing, sale and issue by HMSO or the Queen's Printer includes a reference to printing, issue or sale by a third party (such as a private-sector printer) under the authority of the Queen's Printer or HMSO. The amendments apply to SIs already printed, issued and sold as well as to those to be printed, issued and sold in the future.

Much of HMSO's output, including Acts of Parliament, has for many years been produced under contract with private-sector printers. This practice, which aids economy and value for money, is for the most part entirely lawful. There is, however, some doubt about the effect of the provisions of the 1946 Act on this practice so far as SIs are concerned: HMSO has been placing the printing of SIs with private-sector printers since at least 1965. The effect of the subsection is to confirm the validity of SIs which have been printed in accordance with this practice and to ensure that there is no problem about their evidentiary status (or that of the lists).

2. *Subsection 1(b)* provides that lists of SIs need not bear the imprint of the Queen's Printer. This means that they can be printed for, as well as by, HMSO and be imprinted accordingly. Because such lists have already sometimes been printed in the private sector, this change is also retrospective.
3. *Subsection (2)* restricts the retrospective operation of the amendment made by subsection (1) in relation to section 3(2) of the Act. Section 3(2) provides that in proceedings for an offence consisting of a contravention of a Statutory Instrument it is a defence to prove that the instrument laid had not been issued by HMSO at the time of the alleged contravention. By s.3(1) of the Act an entry in a list showing the date of issue of an SI is conclusive evidence of date when that instrument was first issued. The amendments made by subsection 1 will mean that a list will now have that evidential significance even without the Queen's Printer's imprint and even in relation to an SI printed for (rather than by) the Queen's Printer.

Subsection (2) prevents the amendment made by subsection 1 from applying in proceedings commenced before 21 June (the first full day after publication of the Bill). This means that the Bill will not retrospectively deprive an accused person of an argument which might otherwise have been available to him that the list does not comply with section 3(1) of the Act and so does not provide conclusive evidence of the date of issue.

*Clause 2* defines the short title of the Bill and for it to extend to England and Wales and Scotland and (for some purposes) Northern Ireland.

The *Documentary Evidence Act 1882*, which, as the OPS note states, relates to HMSO's ability to arrange for printing under its authority, is in the following terms: [s4 omitted]

WHEREAS by the Documentary Evidence Act, 1868, and enactments applying that Act, divers proclamations, or regulations, rules, and other documents may be proved by the production of copies thereof purporting to be printed by the Government Printer, and the Government Printer is thereby defined to mean and include the Printer to Her Majesty :

And whereas divers other enactments provide that copies of Acts of Parliament, regulations, warrants, circulars, gazettes, and other documents shall be admissible in evidence if purporting to be printed by the Government Printer, or the Queen's Printer, or a printer authorised by Her Majesty, or otherwise under the authority of Her Majesty:

And whereas it is expedient to make further provision respecting the printing of the copies aforesaid:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Documentary Evidence Act, 1882.
2. Where any enactment, whether passed before or after the passing of this Act, provides that a copy of any Act of Parliament, proclamation, order, regulation, rule, warrant, circular, list, gazette, or document shall be conclusive evidence, or be evidence, or have any other effect, when purporting to be printed by the Government Printer, or the Queen's Printer, or a printer authorised by Her Majesty, or otherwise under Her Majesty's authority, whatever may be the precise expression used, such copy shall also be conclusive evidence, or evidence, or have the said effect (as the case may be) if it purports to be printed under the superintendence or authority of Her Majesty's Stationery Office.
3. If any person prints any copy of any Act, proclamation, order, regulation, royal warrant, circular, list, gazette, or document which falsely purports to have been printed under the superintendence or authority of Her Majesty's Stationery Office, or tenders in evidence any copy which falsely purports to have been printed as aforesaid, knowing that the same was not so printed, he shall be guilty of felony, and shall, on conviction, be liable to penal servitude for a term not exceeding seven years, or to be imprisoned for a term not exceeding two years, with or without hard labour.

The affected sections of the *Statutory Instruments Act 1946* appear to be the following: (emphasis added)<sup>56</sup>

**s2(1):**

2.-(1) Immediately after the making of any statutory instrument, it shall be sent to the King's printer of Acts of Parliament and numbered in accordance with regulations made under this Act, and except in such cases as may be provided by any Act passed after the commencement of this Act or prescribed by regulations made under this Act, copies thereof shall as soon as possible *be printed and sold by the King's printer* of Acts of Parliament.

**s3(1) & (2):**

3.-(1) Regulations made for the purposes of this Act shall make provision for the publication by His Majesty's Stationery Office of lists showing the date upon which every statutory instrument *printed and sold by the King's printer* of Acts of Parliament was first

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<sup>56</sup> The *Statutory Instruments Regulations 1947*, SI 1948/1, regs 5-8, contain further provisions on printing and sale: *Halsbury's statutory instruments*, vol 1, 1996 issue, pp17-18, with selected annotations. See generally K Puttick, *Challenging delegated legislation*, 1988, chap 6

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*issued* by that office; and in any legal proceedings a copy of any list so published *purporting to bear the imprint of the King's printer* shall be received in evidence as a true copy, and an entry therein shall be conclusive evidence of the date on which any statutory instrument was first *issued* by His Majesty's Stationery Office.

(2) In any proceedings against any person for an offence consisting of a contravention of any such statutory instrument, it shall be a defence to prove that the instrument had not been *issued* by His Majesty's Stationery Office at the date of the alleged contravention unless it is proved at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of the person charged.

### s4(2):

(2) Every copy of any such statutory instrument *sold by the King's printer* of Acts of Parliament shall bear on the face thereof-

- (a) a statement showing the date on which the statutory instrument came or will come into operation; and
- (b) either a statement showing the date on which copies thereof were laid before Parliament or a statement that such copies are to be laid before Parliament.

### s8(1)(c):

- (c) provide with respect to any classes or descriptions of statutory instrument that they shall be exempt, either altogether or to such extent as may be determined by or under the regulations, from the requirement of being *printed* and of being *sold by the King's printer* of Acts of Parliament, or from either of those requirements.

## B. Statutory Instruments

Statutory instruments are forms of delegated (or subordinate or secondary) legislation, subject to the provisions of the *Statutory Instruments Act 1946*. Section 1 of the Act defines a 'statutory instrument':

1.-(1) Where by this Act or any Act passed after the commencement of this Act power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on His Majesty in Council or on any Minister of the Crown then, if the power is expressed-

- (a) in the case of a power conferred on His Majesty, to be exercisable by Order in Council ;
- (b) in the case of a power conferred on a Minister of the Crown, to be exercisable by statutory instrument,

any document by which that power is exercised shall be known as a "statutory instrument" and the provisions of this Act shall apply thereto accordingly.

(2) Where by any Act passed before the commencement of this Act power to make statutory rules within the meaning of the Rules Publication Act, 1893, was conferred on any rule-making authority within the meaning of that Act, any document by which that power is exercised after the commencement of this Act shall, save as is otherwise provided by regulations made under this Act, be known as a "statutory instrument" and the provisions of this Act shall apply thereto accordingly.

A full analysis of delegated legislation is beyond the scope of this Paper. The issue is considered in section II of Research Paper 94/16, 28.1.94, in the context of the bill which became the *Deregulation and Contracting Out Act 1994*. Proceedings on that legislation in

both Houses provided a good opportunity for detailed consideration, inside and outwith Parliament, of the nature, function and scrutiny of delegated legislation.<sup>57</sup> For the purposes of the present bill, and this Paper, perhaps the most relevant distinction between delegated legislation and primary legislation (ie, generally, Acts of Parliament) is the nature of their Parliamentary scrutiny and legislative process. Statutes are made by and through Parliament, whereas delegated legislation is, generally speaking, made by a body or person, usually a minister.<sup>58</sup>

5. The power to legislate, when delegated by Parliament, differs from Parliament's own power to legislate: Parliament is supreme and the power of the Queen in Parliament to legislate is unlimited. On the other hand, the power of legislation granted by Parliament to another body or persons is limited by the exact extent of the delegated power to granted; the purported exercise of power beyond the extent so ineffective.

Though often subject to some form of Parliamentary scrutiny, in committee or (increasingly rarely post-Jopling in the Commons) on the Floor, the nature and degree of Parliamentary involvement, especially by backbenchers, in secondary legislation is generally of a far lesser order than in the enactment of primary legislation. Perhaps the most obvious differences are that Members and Peers can neither introduce nor, in general, amend delegated legislation.

Overall, it can be suggested that the degree of Parliamentary and, therefore, public awareness of the existence, content and import of the average statutory instrument is generally less than that of the average bill or statute. This may make the relevant statutory rules and practices surrounding printing and publication for statutory instruments of particular importance, especially those which ensure that instruments which have been made and are operative are known to those they affect. Being secondary rather than primary legislation they can be reviewed by the courts to a stricter degree and can, in appropriate circumstances, even be declared *ultra vires*, as not being validly made within the relevant statutory power or by the correct procedure.<sup>59</sup>

### C. Retrospective legislation

Retrospective legislation is perhaps easier to recognise than to define, as the term can cover a number of related legislative situations. Very broadly, it can be said to be legislation which, in some ways, has legal effect on persons or situations in the past. However there are a number of distinct situations, some of which are probably not properly called 'retrospective' legislation, (at least in its negative connotation) as the following extract describes:<sup>60</sup>

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<sup>57</sup> See, for example, D Miers & A Page, *Legislation*, 2nd ed., 1990, chap 8; E Wade & A Bradley, *Constitutional and administrative law*, 11th ed., 1993, chap 27, and J Hayhurst & P Wallington, "The Parliamentary scrutiny of delegated legislation", 1988 *Public Law* 547-76

<sup>58</sup> *Report from select committee on delegated legislation*, HC 310-I, 1952-53

<sup>59</sup> Examples of challenges include *Defiant Cycle v Newell* [1953] 2 All ER 38, and *R v Sheer Metalcraft* [1954] 1 QB 586. The problem for the affected public is potentially more acute in so-called 'sub-delegated' legislation, such as directions or notices having legislative effect, but issued in, say, departmental circulars. See the criticisms of, for example, Scott LJ in *Blackpool Corporation v Locker* [1948] 1 All ER 85, CA

<sup>60</sup> *Craies on statute law*, 7th ed., 1971, by S Edgar, pp387-9 with selected, relevant footnotes from the text

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## Meaning of "retrospective"

A statute is to be deemed to be retrospective,<sup>30</sup> which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute "is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing." In *Lauri v. Renad*, Lindley L.J. said: "It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such a construction. And the same rule involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary." "There are many cases upon the general doctrine whether an Act of Parliament may be read retrospectively or not, and there are many cases upon the meaning of particular statutes. But the general law was concisely stated by Lord Hatherley in his judgment in *Pardo v. Bingham*, where he said: 'The question is . . . secondly, whether on general principles the statute ought in this particular section to be held to operate retrospectively, the general rule of law undoubtedly being, that except there be a clear indication either from the subject-matter or from the wording of a statute, the statute is not to receive a retrospective construction. . . . In fact, we must look at the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was the legislature contemplated.' Revenue Acts are often made to take effect as from a day before their passing. But extremely plain language would be needed to render penal an act done before the passing of a statute."<sup>36</sup>

## "Ex post facto" statutes

A retrospective statute is different from an *ex post facto* statute.<sup>37</sup> "Every *ex post facto* law....." said Chase J. in the American case of *Calder v. Bull*, "must necessarily be retrospective, but every retrospective law is not an *ex post facto* law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law *ex post facto* within the prohibition,<sup>39</sup> that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction. . . . There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."<sup>40</sup>

<sup>30</sup> The word is somewhat ambiguous. *Allen v. Gold Reefs of W. Africa* [1900] 1 Ch. 656, 673, Lindley L.J.

<sup>36</sup> *In Cohen v. Ingram* (a case heard before the London Quarter Sessions Appeal Committee on August 27, 1963) a motoring offence had been committed on May 7, 1963, when there was no power to endorse a licence for such offence, and it was held that s.7 of the Road Traffic Act 1962, which had only come into operation on May 29, 1963, gave no power to endorse for an offence prior to the latter date, there being no specific words in the Act making a. 7 retrospective. For instances of retrospective penalties imposed in time of war, see *Director of Public Prosecutions v. Lamb* [1941] 2 K.B. 89; *Buckman v. Button* [1943] K.B. 405; *Mischeff v. Springett* [1942] 2 K.B. 331 and *R. v. Oliver* [1944] K.B. 68.

<sup>37</sup> Blackstone (Comm. Vol. 1, p. 46) describes *ex post facto* laws as those by which "after an action indifferent in itself is committed, the legislature then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it." Acts of indemnity are, however, also *ex post facto* laws so far as they take away civil rights of action, and are statutory pardons as to criminal liability, and as to indemnity for acts done in exercise of martial law: *Phillips v. Eyre* (1870) L.R. 6 Q.B.1; and *Journ.Soc.Comp.Legislation* (N.S.), 1900, p. 60.

<sup>39</sup> The prohibition referred to is contained in the Constitution of the United States of America, Article 1, s. 9. prohibiting the passing of *ex post facto* laws.

<sup>40</sup> Cited and approved in *Phillips v. Eyre* (1870) L.R. 6 Q.B. 1, 26. Willes J.

While generally speaking retrospective legislation is said to be undesirable, as being repugnant to the rule of law, there are perhaps degrees of retrospectivity. Legislation which makes legal past actions, decisions or circumstances (especially by public officials or bodies) which were thought to be legal by all concerned<sup>61</sup> but which have turned out to be unlawful (eg, if so declared by a court), or possibly so, may not be regarded as particularly undesirable *per se*. There may, of course, be some political argument surrounding the making of the original legislation, the failure to detect the illegality thereafter and the actions taken, or not taken, to correct the matter and remedy any harm done by the illegality. The nature of this argument may depend, to some extent on the subject matter of the faulty legislation, be it, say, social security regulations, emergency powers (by way of Indemnity Acts, for example) or local government finance rules.<sup>62</sup>

On the other hand legislation which makes unlawful that which was lawful at the time is inherently more suspect, because those covered by the relevant laws were not (or believed they were not) acting unlawfully at the relevant time, and is a practice potentially open to abuse by the executive. The courts will, in general, be slow to interpret legislation as having retrospective effect.<sup>63</sup> Within this broad spectrum there are degrees of retrospectivity, for in many cases, especially those relating to financial or regulatory matters, ministers may announce the proposed change in the law to take effect from a particular date or time, or in particular circumstances, even though the relevant legislation is not enacted or does not come into force until a later date. This is a common device for taxation matters, where changes in liability or rates may apply either immediately or a time in the near or medium term. In such circumstances those persons or bodies potentially affected by the change can be, in practice, assumed to be aware of it and of the potential consequences of their consequent actions, if and when the relevant law is enacted.

It follows that the most suspect form of retrospectivity is that which makes, without any advance warning, unlawful, or even criminal, that which was lawful at the time it was done. Such legislation is *prima facie* in breach of article 7(1) of the European Convention on Human Rights,<sup>64</sup> although, as the Convention is not part of domestic law, it does not have direct effect in domestic jurisprudence. In any case, because of Parliamentary sovereignty, UK legislation can override, expressly or impliedly, the Convention prohibition. However Lord Reid remarked that "it is hardly credible that any government department would promote or that Parliament would pass retrospective criminal legislation."<sup>65</sup>

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<sup>61</sup> including those, such as Parliament and ministers, involved in the making of the relevant laws

<sup>62</sup> A notable instance is the *War Damage Act 1965* to overturn, retrospectively, the effect of the House of Lords decision in *Burmah Oil v Lord Advocate* 1964 SC (HL) 117, [1965] AC 75, concerning compensation for war damage caused by troops during the last War. The organisation *Justice* criticised the Government's legislative action as "a serious infringement of the rule of law by which is understood the supremacy of the courts (quoted in C Turpin, *British government and the constitution*, 3rd ed., 1995, p66). See also the discussion in C Harlow & R Rawlings, *Law and administration*, 1984, pp377-82

<sup>63</sup> *Phillips v Eyre* (1870) LR 6 QB 1 at 23, Willes J.

<sup>64</sup> eg *Welch v UK*, *Times*, 15.2.95 (drug trafficking confiscation order)

<sup>65</sup> *Waddington v Miah* [1974] 2 All ER 377 at 379. See also *Re Barretto* [1994] 1 All ER 447

## **Select Bibliography**

Report of the Committee of Inquiry into Government Printing Establishments [Gretton enquiry] Cmd 2828

*Parliamentary Affairs* 1955 "Her Majesty's Stationery Office" by D C Dashfield

First Report from the Select Committee on Estimates Her Majesty's Stationery Office HC 33 Session 1956/57

*Her Majesty's Stationery Office: The story of the First Two Hundred Years* [1986] by Hugh Barty-King

HMSO Government Publishing Reports 1961 and 1963

HMSO Executive Agency Framework Document December 1988 Dep 4493

First Report of Lords Select Committee on the House of Lords Offices HL Paper 12 Session 1995/96

Cabinet Office HMSO Information Pack Dep 2500 November 1995

Finance and Services Select Committee Minutes of evidence HC 97 Session 1995/95

Information Select Committee First Report: Electronic publication of House of Commons documents. HC 328 1995/96

Cabinet Office HMSO Edited Information Memorandum prepared for Parliament Dep 3218 April 1996

HMSO Trading Fund Accounts 1995 HC 349 Session 1995/96 April 1996

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