

The Accountability Debate: Ministerial Responsibility

Research Paper 97/6

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The political debate on Parliamentary accountability and ministerial responsibility continues. This Paper seeks to update Members on that debate by presenting (in roughly chronological fashion) the various issues, such as the duty of ministers not to mislead Parliament, as set out in a number of debates and reports in recent years. It should be read with (i) Research Paper 96/27, 21 February 1996, which considered the general principles behind the constitutional concepts of individual ministerial responsibility and, in this context, Parliamentary accountability, and examined some notable case-studies, and (ii) the companion *The Accountability Debate* Research Papers, nos. 97/4, *Next Step Agencies* and 97/5, *Codes of guidance and Questions of Procedure for Ministers*, January 1997.

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Summary

The constitutional concept of individual ministerial responsibility is a central notion in the 'Westminster model' of Parliamentary democracy. Yet, because of the unwritten (or uncodified) nature of our constitution, it remains an ill-defined and flexible doctrine, open to interpretation at each particular case when it may be said to be relevant. Research Paper 96/27, 21.2.96, *The Individual Responsibility of Ministers: An Outline of the Issues*, examined the general principles and practice of the concept, and summarised a number of the major relevant 'case studies' since Crichton Down in 1954.

This Paper seeks to trace the recent development of the doctrine by reference to a series of reports/debates, in Parliament and from other bodies such as the Nolan Committee and the Scott Inquiry. This has been driven by at least two major factors:

- (a) the changes in the structure and operation of the Civil Service, including the creation of *executive agencies* under the Next Steps Initiative (on which see the companion Research Paper 97/4, *The Accountability Debate: Next Steps Agencies*, Jan 1997).
- (b) a number of political controversies giving rise to calls, for example, for ministerial resignations, of which the 'arms-for-Iraq' affair investigated by the Scott Inquiry is the most recent and, perhaps, most significant.

Issues which are considered as part of this mainly chronological survey include the obligation of Ministers to account fully to Parliament and not to mislead it; the powers of select committees to enforce their scrutiny function (see generally, Background Paper 298, *Select Committees*, Sept 1992); the situations where the sanction of ministerial resignation is appropriate, etc.. The Revision of existing documents, especially *Questions of Procedure for Ministers* (hereafter "*QPM*"), and the production of other relevant codes/guidance, is also examined. Other than structural developments such as agencies, the present debate has echoes of long-running arguments about the nature of accountability, which was the subject of intense debate between Parliamentary select committees and the Government at the time of the Westland affair in the mid-1980s.

The Government recently summarised its initiatives on accountability in Roger Freeman's 22 January Written Answer on its response to the Scott Inquiry:

The Government provided a Memorandum to the Public Service Committee on 29 March (HC 313-III, setting out the Government's understanding of the requirements of Ministerial Accountability and the provision of information to Parliament, as part of the Committee's consideration of Ministerial Accountability and Responsibility. Following receipt of the Committee's report, the Government published its response on 7 November [WA 594] reaffirming its commitments to arrangements under which it will remain open and fully accountable. Annexed to the response [HC 67] was "New Guidance to Officials on Drafting Answers to Parliamentary Questions" which makes clear that when information is refused in response to Parliamentary Questions reasons should be given relating to the exemptions laid down in the "Code Of Practice on Access to Government Information".¹

This Paper should be read in conjunction with the companion *The accountability debate* Papers, Research Papers 97/4 and 97/5.

¹ HC Deb Vol 288 c601, 22.01.97, extract

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Introduction

This paper analyses the recent debate on ministerial responsibility and accountability by reference, in general in chronological order, to recent reports, debates, speeches and statements.

IThe July 1993-94 TCSC Interim Report, *The Role of the Civil Service*²

The report contained the following section on responsibility and accountability:

24. During the last Parliament the Government told the then Committee that the management reforms in recent years, and the Next Steps programme in particular, left the traditional doctrine of Ministerial accountability unaffected. This position was reaffirmed by Mr Mottram and Sir Robin Butler, who told us that the principle of accountability through Ministers to Parliament remained valid despite the management changes in the Civil Service. There have been changes in practice: Agency Chief Executives now answer many Parliamentary questions and their replies are published in Hansard. Some witnesses to the Sub-Committee expressed scepticism about whether the principle of accountability through Ministers was in fact being applied satisfactorily in practice. Such concerns have also been voiced in the House of Commons.

25. The Chancellor of the Duchy of Lancaster has argued that, as a result of the Next Steps initiative and other public service reforms, there is now a clearer distinction between "responsibility", which can be delegated, and "accountability", which remains firmly with the Minister". However, it has been suggested to the Sub-Committee that the Next Steps programme has not, in reality, led to a clear division of responsibilities between Chief Executives and Ministers. This raises the question of whether the quasi-contractual relationship between Agencies and their Ministers should be replaced by a more formal contractual relationship.

26. It was argued in evidence to the Sub-Committee that the problems of accountability and responsibility in the executive field are magnified in the area of policy advice. Several witnesses saw a need for a clarification of the precise division of responsibilities between Ministers and Civil Servants in this field, which, it was argued, had become more uncertain in recent years.¹ One proposed solution was a formal contract or other document stating the responsibilities of named Civil Servants for giving policy advice, against which their performance could be measured or at least judged.

27. Following the establishment of departmental Select Committees in 1979, there is now more direct contact between Civil Servants and Parliament. The implications of this for accountability have been considered on previous occasions by our predecessors and by the Liaison Committee, which examined how far Civil Servants could be said to be accountable to Parliament and its Committees for their actions and conduct. It was suggested to the

² 6th report of the Treasury and Civil Service Committee, 1992-93, HC 390, July 1993. In this Paper, all footnotes are deleted from reproduced extracts, unless stated otherwise.

Sub-Committee that the guidance for Civil Servants on appearing before Select Committees-known as the Osmotherly Rules - unnecessarily constrained Parliamentary oversight of the Civil Service and the executive more generally, although others, including Mr Waldegrave, argued that the rules represented an expression of the doctrine of Ministerial accountability. It was also suggested to the Sub-Committee that attempts by Parliament to participate in revision of the Osmotherly Rules would not be in Parliament's interest, since it would be an acceptance of limits on the right of Select Committees to ask questions on certain matters and would therefore restrict their exercise of the rights and privileges of the House of Commons.

28. In evidence so far received by the Sub-Committee, the possible value of an extension of avenues of accountability beyond Parliament has also been mooted. In the area of service provision, it has been suggested that direct forms of redress and statements of entitlement properly enforceable through the courts might have important roles to play in providing accountability for Civil Service functions, although some witnesses pointed to drawbacks which might arise from an excessive stress on such an approach.

II The November 1994 TCSC Report, *The Role of the Civil Service*³

The Treasury Committee considered the nature of accountability in some detail "because its precise meaning and application gave rise to greater uncertainty in the course of the inquiry than any other principle." It sought "to disentangle some of the confusion surrounding this concept and set down what we see as the basic principles of accountability." (para. 118). It tackled the Government's formulation in terms of a distinction between *accountability* and *responsibility*, as expounded by the Head of the Civil Service, Sir Robin Butler, and others (para. 120):

According to the Government, Ministerial accountability to Parliament is a Minister's ultimate duty to account to Parliament for the work of his Department: "the Minister in charge of a Department is the only person who may be said to be ultimately accountable for the work of his department". In the Government's view, it means that "in the last resort ... Ministers can be challenged about any action of the Civil Service". The Government contends that since civil servants act on behalf of Ministers-except in specified cases where statutes confer powers or responsibilities directly upon civil servants-Ministers alone are accountable to Parliament. In the view of the Government, civil servants are accountable to Ministers, and when they give evidence to Select Committees, they do so "on behalf of Ministers". According to the Armstrong Memorandum, even the appearance of Accounting Officers before the Committee of Public Accounts is "without prejudice to the Minister's responsibility and accountability to Parliament in respect of the policies, actions and conduct of his Department". Responsibility, according to the Government, has a separate meaning in this context which "implies direct personal involvement in an action or decision, in a sense which implies personal credit or blame for that action or decision". In the view of the Government, a Minister is *accountable* for all the actions and activities of his Department, but is not *responsible* for all the actions in the sense of being blameworthy; a civil servant is not directly accountable to Parliament for his actions, but is responsible for certain actions and can be delegated clearly defined responsibilities.

³ 5th report of the Treasury and Civil Service Committee, 1993-94, HC 27, November 1994

The Committee noted that the Government believed that its approach was consistent with practice, including the extreme sanction of ministerial resignations, throughout this century. Ministers are not expected to resign over every departmental mistake though they are responsible to Parliament for relevant corrective action, and the resignation in the 1954 Crichton Down case was the exception that proves the rule, (as classically set out by Sir David Maxwell Fyfe in the debate on that case).⁴ This view was open to two main objections:

(a) *"it is more novel than its advocates are prepared to admit, that it does not have sufficient authority and acceptance to be said to represent a 'constitutional convention.'"* There appeared to be a belief that at one time it was accepted that ministers were responsible for all the actions of their officials, but that, because of the growth and complexity of the public service, there had been a change of doctrine. (para. 122)

(b) *"even if the Government's description of the doctrine were correct, it is a fundamentally Victorian conception which is no longer appropriate to modern circumstances."* In the past select committees have suggested that this could be dealt with by extending the principle of direct accountability of officials. (para. 123)

The Treasury Committee declared that "it is clear that any effective application of the doctrine [of ministerial accountability] depends to a considerable extent upon two elements: the honesty and integrity of Ministers and civil servants in accounting to Parliament and the public for their decisions and actions; the powers and effectiveness of Parliament, and of the Select Committees of the House of Commons in particular, in holding the Executive to account." (para. 123) On *honesty and integrity* the report considered the requirement in *QPM* for ministers to inform Parliament fully and not to mislead it, especially in the light of the 'arms-for-Iraq' affair and the evidence to the Committee of William Waldegrave (then Public Service Minister) on misleading Parliament. Mr Waldegrave had cited, as an example of this, remarks to the House by the then Chancellor of the Exchequer, James Callaghan, before devaluation in November 1967.⁵ On *Parliamentary accountability*, the report examined the power of select committees to scrutinise the Executive, in particular, to question effectively officials in the context of the 'Osmotherly rules'⁶, Government guidance on how they should act when before committees. The Committee's conclusions on Parliamentary accountability were as follows:

132. An effective system of Parliamentary accountability of the Executive is an essential component of a Parliamentary democracy. We believe that an effective system depends upon two vital elements: clarity about who can be held to account and held responsible when things go wrong; confidence that Parliament is able to gain the accurate information required to hold the Executive to account and to ascertain where responsibility lies. We are not convinced that the explanation of the doctrine of Ministerial accountability and its implications as presently adumbrated by the Government fully conforms to these

⁴ The relevant section of Sir David Maxwell Fyfe's speech is reproduced as Appendix A to this Paper. On Crichton Down see section IIA of Research Paper 96/27

⁵ See paras 125-7, and Research Paper 96/27, pp 22-3

⁶ On which see Research Paper 97/5 *'The Accountability Debate - Codes of guidance and Questions of Procedure for Ministers'*

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requirements. **We find the Government's attempts to draw a sharp distinction between accountability, which cannot be delegated by Ministers, and responsibility, which can, unconvincing.** The implication of this distinction is that Ministers retain ultimate responsibility for controlling the system through which information about the allocation of responsibility on a particular matter is made available to Parliament. We believe that it is both possible and desirable to move towards a system in which responsibility and accountability are more closely aligned in clearly defined circumstances. We make particular proposals towards this end below.

133. Lord Callaghan attached importance to clarifying the circumstances in which a Minister should resign, although he noted that the influence of the Prime Minister of the day and the feelings of the Minister himself would always be important factors. Mr Waldegrave believed that such circumstances were difficult to categorise and that Ministerial resignations would continue to be decided on a case by case basis. Sir Robin Butler was critical of the "rather foolish game of pursuing resignations", which was "counter-productive" and debased the currency. Ministerial preparedness to resign when Ministerial responsibility for failure has been established lies at the very heart of an effective system of Parliamentary accountability and, as Mr Waldegrave acknowledged, Select Committees have an important role in determining the allocation of responsibility. In seeking to perform this function and their wider role, Select Committees might well require more information than might readily be made available in accordance with the Executive's own interpretation of the doctrine of Ministerial accountability. The recent Report by the Foreign Affairs Committee on the Pergau Hydro-Electric Project demonstrates the range of information which can be made available by the Government to a determined Select Committee. It would not be appropriate for Select Committees to seek to negotiate new rules to replace the Osmotherly Rules, because they are only to be regarded as the Government's opening negotiating position in its dealings with Select Committees. The precise implications of the doctrine of Ministerial accountability for the conduct of civil servants in relation to Select Committees is unlikely to be agreed between the Government and Select Committees. It should be borne in mind that an attempt to determine the precise level of Ministerial responsibility may sometimes involve an assessment of the extent of the responsibility of others. We note that the structure of the Civil Service and of the Executive more generally has changed considerably since the Procedure Committee last conducted a review of the departmental Select Committees. We recommend elsewhere in this Report measures which should be taken by the Government to enhance the accountability of the Executive to Parliament. We believe that it might also be appropriate for the Procedure Committee to undertake an inquiry to consider what commensurate actions should be taken by the House of Commons in response to the changing structure of Government.

134. Effective accountability depends in considerable measure upon adherence by Ministers and civil servants to the duty set out in *Questions of Procedure for Ministers* "to give Parliament, including its Select Committees, and the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or mislead Parliament and the public". We are aware of considerable public cynicism about the honesty of politicians generally and in this context concern about the honesty and integrity of Ministerial statements to and answers in Parliament might seem misplaced. However, the knowledge that Ministers and civil servants may evade questions and put the best gloss on the facts but will not lie or knowingly mislead the House of Commons is one of the most powerful tools Members of Parliament have in holding the Executive to account. Not only is the requirement laid down clearly in Government guidance to Ministers, it is a requirement which the House of Commons itself expects from all its Members, departure from which standard can be treated as a contempt. We accept that the line between non-disclosure and a misleading answer is often a fine one, not least because the avoidance of misleading answers

requires not only strict accuracy but also an awareness of the interpretations which could reasonably be placed upon an answer by others, but Ministers should be strengthened in their determination to remain the right side of that line by certainty about the consequences of a failure to do so. **Any Minister who has been found to have knowingly misled Parliament should resign.**

In the context of its analysis of accountability, the Committee also examined forms of non-Parliamentary accountability, such as judicial review, and the Parliamentary Ombudsman, and the issue of open government. (see paras 135-41).

III The January 1995 Government response: *Taking forward continuity and change*⁷

The Government's response to the TCSC report was published in January 1995, much of which dealt with internal civil service issues and the relationship between ministers and officials.⁸ On recommendations on accountability, the Government responded (pp27-9):

16. We find the Government's attempts to draw a sharp distinction between accountability, which cannot be delegated by Ministers, and responsibility, which can, unconvincing (paragraph 132).

There is much in the Committees's analysis of accountability with which the Government can agree. The accountability of the Civil Service through Ministers to Parliament and the constant pressure for improvement arising from Parliamentary scrutiny of the executive are important facts of life for all civil servants.

It may be that some of the difficulty the Committee finds with the Government's analysis is that the words 'accountability' and 'responsibility' have been used ambiguously and interchangeably in many authoritative constitutional texts, as earlier evidence pointed out. In the Government's view, a Minister is 'accountable' to Parliament for everything which goes on within his Department, in the sense that Parliament can call the Minister to account for it. The Minister is responsible for the policies of the Department, for the framework through which those policies are delivered, for the resources allocated, for such implementation decisions as the Framework Document may require to be referred or agreed with him, and for his response to major failures or expressions of Parliamentary or public concern. But a Minister cannot sensibly be held responsible for everything which goes on in his Department in the sense of having personal knowledge and control of every action taken and being personally blameworthy when delegated tasks are carried out incompetently, or when mistakes or errors of judgement are made at operational level. It is not possible for Ministers to handle everything personally, and if Ministers were to be held personally responsible for every action of the Department, delegation and efficiency would be much inhibited. It was for this reason that evidence suggested the use of the word 'accountable' for the first of these two meanings of the word responsible, to distinguish it from the second.

⁷ Cm 2748

⁸ These issues are considered in detail in Research Paper 97/4, *The Accountability Debate: Next Steps Agencies*

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This is not a new doctrine. As the Committee notes, Sir David Maxwell-Fyfe said in the Crichton Down debate in 1954 that 'a Minister is not bound to defend action of which he did not know, or of which he disapproves.' In the Government's view this remains the position. The Minister's accountability in such situations is to investigate and give an account of what has occurred, to see that disciplinary action is taken as appropriate, and to take action to avoid a recurrence. (It is not clear that Sir Thomas Dugdale's resignation was in fact on account of action taken by officials without his knowledge or outside a policy framework set by Ministers, and the analyses of commentators who have studied the documents of the time bring into question whether this resignation was indeed "an exception that proved the rule" or bears the construction put on it in paragraph 3.13 of the Committee's 1985-86 report, quoted in paragraph 122.)

The Government's view remains that Ministers are accountable to Parliament for the policy, administration and resources of their departments, including operational action, successes and mishaps, whatever the extent of delegation and whether they were personally involved or not. This is not incompatible with the extensive role of civil servants in giving evidence to Select Committees-but such evidence giving does not and should not exclude Ministers from ultimate accountability to Parliament for the whole range of a department's business. Nor does it entail that Ministers must be expected to be personally responsible, in the sense of being creditworthy or blameworthy, for every action of their department.

While it is open to MPs and Committees to establish the facts, to find credit or fault and to criticise, it is not in the end for them to give instructions to officials as to how policies should be determined or departments should be run, or to discipline officials. The line of accountability of officials runs through Ministers to Parliament. If Parliament is not satisfied with the account given, the ultimate sanctions are the motion of no-confidence or the withholding of supply

The Government has issued a new edition of the 'Osmotherly Rules', now entitled 'Departmental Evidence and Response to Select Committees.' The Government notes the analysis of the Committee in paragraph 128-131 of its report. Parliamentary endorsement of these rules is not claimed or expected. The Government hopes nevertheless that the relationship between departments and the Select Committees will continue to be a generally constructive one, and is determined for its part to contribute to the success of the Select Committee system.

17. We consider that any Minister who has been found to have knowingly misled Parliament should resign (paragraph 134).

As the Prime Minister made clear in his letter to the Chairman of the Sub-Committee of 5 April 1994:

"It is clearly of paramount importance that Ministers give accurate and truthful information to the House. If they knowingly fail to do this, then they should relinquish their positions except in the quite exceptional circumstances of which a devaluation or time of war or other danger to national security have been quoted as examples."

IV The May 1995 Nolan Report⁹

⁹ Cm 2850

While the main subject matter of the first report of the Nolan Committee -- standards in public life -- may appear to be directly relevant to the issues discussed in this Paper, the inquiry and report did consider accountability issues. 'Accountability' (though expressed in terms of the public rather than Parliament) was one of its *seven principles of public life*, and others such as 'openness', in the way they are defined, are clearly relevant also.

A key conclusion of the report was that "there is a need for greater clarity about the standards of conduct expected from Ministers. The Prime Minister should draw up specific guidance on this subject, based on the principles set out in this report." (p.46) The report examined *QPM*, and recommended that a code of guidance for ministers be produced, either as part of *QPM* or as a separate document. The code would require ministers to abide by certain "essential principles" of ministerial conduct, including (p.49):

- (ii) *Ministers must not mislead Parliament. They must be as open as possible with Parliament and the public;*
- (iii) *Ministers are accountable to Parliament for the policies and operations of their departments and agencies.*

The Committee considered the value of such a code (p.50):

17. Setting out these principles for Ministers might seem unnecessary or obvious. We do not share that view. The Government has accepted the proposition that there should be a code of conduct for civil servants. It is difficult to see why the same approach should not apply to Ministers. The advantages of a code can be seen by considering the number of Ministers who have had to resign since the war because of avoidable errors of judgement. We do not, though, believe that express sanctions need to be set out to prevent Ministers from doing wrong. Public and media scrutiny of ministerial conduct in the light of the principles we have listed above is likely to be far more effective. Ministers themselves will be able to judge possible courses of action against these principles, supported by the useful rules-of-thumb recommended to us by Lord Howe: 'Would you ... feel happy to see all the relevant facts of any transaction or relationship fully and fairly reported on the front page of your favourite newspaper', and 'If in doubt, cut it out'.

V The February 1996 Scott Report and the Parliamentary debates¹⁰

Ministerial accountability and responsibility was at the heart of Sir Richard Scott's long-running inquiry into the 'arms-for-Iraq' affair. He returned to the issue in his Blackstone lecture at Oxford in May 1996.¹¹ In his report he tested ministers' actions in relation to Parliament by reference to the guidance contained in paragraph 27 of *QPM*, the duty to provide as full information as possible to, and not to deceive or mislead, Parliament or the

¹⁰ HC 115, 1995-96, section K8 (vol IV, pp 1799-1806), February 1996; HC Deb vol 272 cc 589-694 HL Deb vol 569 cc 228-1358, 26.2.96. As with the rest of this Paper, only accountability to Parliament, rather than directly to the public, is considered here

¹¹ See Sir R Scott, "Ministerial accountability", 1996 *Public Law* 410-26

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public. "The obligation of Ministers to give information about the activities of their departments and to give information and explanations for the actions and omissions of their civil servants, lies at the heart of Ministerial accountability."¹² Thus if ministers withhold information, "it is not a full account and the obligation of Ministerial accountability has, *prima facie*, not been discharged. Without the provision of full information it is not possible for Parliament ... to assess what consequences, in the form of attribution of responsibility or blame, ought to follow A failure by Ministers to meet the obligations of Ministerial accountability by providing information about the activities of their departments undermines, in my opinion, the democratic process." (para K8.3)

He also examined the Government's practice on the provision of information to Parliament on arms sales, and recommended that this should be reviewed,¹³ and, in conclusion, considered Sir Robin Butler's distinction (given in evidence to his Inquiry, and to the 1994 Treasury Committee inquiry¹⁴) between 'accountability' and 'responsibility'(K8.15-16):

Ministerial "accountability" is a constitutional burden that rests on the shoulders of Ministers and cannot be set aside. It does not necessarily, however, require blame to be accepted by a Minister in whose department some blameworthy error or failure has occurred. A Minister should not be held to blame or required to accept personal criticism unless he has some personal responsibility for or some personal involvement in what has occurred. The kernel of Sir Robin's point, I think, is that the conduct of government has become so complex and the need for Ministerial delegation of responsibilities to and reliance on the advice of officials has become so inevitable as to render unreal the attaching of blame to a Minister simply because something has gone wrong in the department of which he is in charge. For my part, I find it difficult to disagree.

K8.16 Sir Robin's distinction between "accountability" and "responsibility" has important constitutional implications and does not have approval from all quarters. His point, however, that a Minister cannot reasonably be held to blame for things done or omitted within his department of which he knew nothing at the time and could not have been expected to have foreseen or prevented, seems to me to have an important bearing on the obligation of Ministers to provide information to Parliament. If Ministers are to be excused blame and personal criticism on the basis of the absence of personal knowledge or involvement, the corollary ought to be an acceptance of the obligation to be forthcoming with information about the incident in question. Otherwise Parliament (and the public) will not be in a position to judge whether the absence of personal knowledge and involvement is fairly claimed or to judge on whom responsibility for what has occurred ought to be placed. Any re-examination of the practices and conventions relied on by Government in declining to answer, or to answer fully, certain Parliamentary Questions should, in my opinion, take account of the implications of the distinction drawn by Sir Robin between Ministerial "accountability" and Ministerial "responsibility" and of the consequent enhancement of the need for Ministers to provide, or to cooperate in the provision of, full and accurate information to Parliament.

¹² Report, para. K8.2

¹³ See now *Ministerial accountability the release of information on defence related exports: a background note*, February 1996

¹⁴ See Evidence, 9.2.94; and section II, 'The November 1994 TCSC Report, *The Role of the Civil Service*,' and Appendix B of this Paper

In his Blackstone lecture, Sir Richard said that he had come to understand that too much attention had been concentrated on the 'resignation' aspects to the detriment of consideration of less dramatic, but important aspects, analysing this by reference to Sir David Maxwell Fyfe's 1954 Crichton Down speech,¹⁵ especially its last two categories. Where an official has not made a serious error, Sir David had said that a minister should accept responsibility although not personally involved. Sir Richard assumed that this "would require the minister to bear the brunt of any criticism without seeking to deflect the criticism on to his civil servants and to accept an obligation to remedy, so far as might be practicable, what had gone wrong. It is a feature of this category of case that a personally blameless minister would be apparently required to take the blame", although blame would often be minimal and not harm the minister's reputation or career, or require resignation.¹⁶

He then considered the fourth Maxwell Fyfe category, where a civil servant has acted reprehensibly despite the minister's lack of knowledge or disapproval. In such cases Sir David had said that a minister had no obligation to endorse or defend such action, but would remain "constitutionally responsible to Parliament for the fact that something had gone wrong, and he alone can tell Parliament what has occurred and render an account of his stewardship." Sir Richard questioned the nature of such 'constitutional responsibility', and the belief in recent times, such as by Enoch Powell in the Maze Prison escape episode,¹⁷ that resignation is still required: (pp412-3)

The assertion that constitutional accountability remains with the Minister in charge is clearly right, but the conclusion that a personally blameless minister must resign if a serious error is committed within his department seems to me to be something of a non-sequitur. The conclusion is certainly not self-evident. Even in the *Crichton Down* case it was not clear that Sir Thomas Dugdale's resignation was brought about by his constitutional responsibility for the acts of the civil servants in his department rather than by the political misfortune that he disagreed with the Government's approach to the affair and that he had been the object of severe criticism by the 1922 Committee. His resignation does not, in my opinion, assist in elucidating the nature of the "constitutional responsibility" that Sir David Maxwell Fyfe regarded as attaching to a blameless minister.

Sir Richard examined Sir Robin Butler's famous distinction between 'accountability' and 'responsibility', as presented in his evidence to the 'arms-for-Iraq' Inquiry, and Sir Robin's belief that even Lord Carrington's Falklands resignation was (whatever the political requirements may be) constitutionally unnecessary.¹⁸ In Sir Richard's view, Sir Robin's opinion "does appear to correspond to post-war practice. It is notable that, in modern times at least, ministerial resignations, save and except that 'scapegoat' type of case, are attributable to political and personal pressures rather than to the dictates of any constitutional principle." (p.414) Resignations (or demands for such) due to events in ministers' private lives had nothing whatever to do with the constitutional doctrine of responsibility, neither had

¹⁵ see Appendix A of this Paper

¹⁶ "Ministerial accountability", *op cit*, p.411

¹⁷ On which see section IIH of Research Paper 96/27

¹⁸ On which see section IIG of Research Paper 96/27

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resignations due to the doctrine of *collective* responsibility,¹⁹ and concluded that "indeed apart from the case of Lord Carrington, and, perhaps, the case of Mr Leon Brittan, it is difficult to identify a single minister who in the post-war period has resigned on account of departmental errors committed within the department for which he or she was responsible. That is not to say that departmental errors have not been committed under every administration, nor that some of them have not been serious ones. But resignations have not followed. It is political pressures, which may build up without any such error having occurred, that have impelled resignations. In the absence of sufficient political pressures resignations are not brought about by departmental errors." (p.415)

He noted the concern about this expressed by some, including Parliamentary committees,²⁰ that is, that "the causal divorce between departmental error and ministerial resignation has been portrayed as a damaging weakness of the constitutional doctrine of ministerial accountability." In particular he disagreed with the Treasury Committee's view that 'ministerial preparedness to resign when Ministerial responsibility for failure has been established lies at the very heart of an effective system of parliamentary accountability': "It is not, I suggest, the willingness of ministers to resign that lies at the heart of ministerial accountability but, rather, the obligation of ministers to give, or to facilitate the giving, of information about the activities of their departments and about the actions and omissions of their civil servants."²¹ This was not, in his view, a "novel perception", citing the Crichton Down formulation in support. He agreed with the Treasury Committee's 1994 view that the constitutional doctrine depended, *inter alia*, on Parliament's access to information: "the key to ministerial accountability must surely be the obligation to give information Indeed the point is, in my opinion, almost self-evident. If, and to the extent that, the account given by a minister to Parliament, whether in answering parliamentary questions, or in a debate or to a select committee, withholds information on the matter under review, the account given is not a full account and the obligation to account for what has happened has, *prima facie*, not been discharged." He went on to concede that everyone did accept that there were circumstances in which full, or even any information could not be given:²²

But the necessity, which will sometimes arise, of withholding in the public interest information from Parliament and from the public does not alter the fact that to do so involves a dilution, *pro tanto*, of the obligations imposed by ministerial accountability. It follows that the withholding of information by an accountable minister should never be by rote, should never be based on reasons of convenience or for the avoidance of political embarrassment, and should always require special and clear justification.

Other than these rare cases "the proposition that it is acceptable for a minister to give an answer that is deliberately incomplete is one which, in my opinion, is inconsistent with the

¹⁹ He cited as examples, those of George Brown in 1968 and Michael Heseltine in 1986. See generally Research Paper 96/55, 30.4.96

²⁰ He cited the Treasury Committees reports in 1986 and 1994, as examples.

²¹ See its 5th report of 1993-94, HC 27, para. 132 (on the report, see section II above 'The November 1994 TCSC Report, *The Role of the Civil Service*')

²² *op cit*, p.416. On these issues, see the analysis of the Public Service Committee in its July 1996 report, summarised in section VII of this Paper 'The July 1996 Public Service Committee Report'

requirements of the constitutional principle of ministerial accountability. Half the picture can be true, as one witness said. But the audience does not know that it is seeing only half the picture. If it did know, it would protest. If there were a reason for the withholding of a full answer, it would ask to be told what it was. The reason might, of course, be a good and sufficient one. But to supply information which is known to be less than complete to an audience that does not know it is less than complete involves, in my opinion, a failure to comply with the requirements of ministerial accountability." (p.422). Turning to the provision of information to select committees, Sir Richard said (p.422):

Problems of accountability arise, also, in connection with inquiries conducted by Parliamentary Select Committees. Sometimes, perhaps often, first-hand information about factual matters inquired into can be given by officials or ex-officials but not by the minister himself. In such a case it would naturally be supposed that the minister would co-operate with attempts by the select committee to take evidence from the individuals with the first hand knowledge. This supposition is not necessarily correct..... How can it be regarded as compatible with a minister's obligation of accountability to Parliament for a minister to reserve the right to instruct officials with knowledge of the matter being inquired into to decline to answer factual questions from the committee or to instruct officials what answers to give to factual questions?

He concluded from his survey, based on his experiences during the 'arms-for-Iraq' inquiry, that there was a need for a "comprehensive review" by both Parliament and the Government "first, of the list of subjects on which government's refusal to answer questions is still justifiable and, secondly, of the conventions governing the obligation of ministers to provide or facilitate the provision of information to select committees." (p.424) Government would need to review how it can abide by its own guidance in paragraph 27 of *QPM*, and ensure that its obligations are met by reference to public and clear guidelines, such as published codes of practice and not, for example, to unclear general statements such as 'established Parliamentary conventions'.

Sir Richard claimed that "the consequence of a failure by ministers to discharge their obligations of accountability will be damage to the democratic character of our political institutions." But democracy was not an absolute: institutions and concepts evolve, and not always in a way supportive of democracy. The present system of answerability to the public once every 4-5 years through a general election, means that at that stage "the public is expected and entitled to make a judgment on the record of the administration in the preceding period. How is the public to do so, except on the basis of full information? .. A failure by ministers to meet the obligations of ministerial accountability by providing information about the activities of their departments engenders cynicism about government and undermines, in my opinion, the democratic process." (p.425)

He also thought there was a need to review the machinery which enforced or monitored government's accountability obligations. Ministers must accept the need to be as forthcoming as possible with relevant information, and when they do not supply 'full information' they should explain why, and not rely on general reasons such as the 'public interest'. "Consideration should be given to the appointment of a senior officer of Parliament tasked

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to inquire into the adequacy of refusals on public interest grounds to supply information. Such an officer could report to Parliament at regular intervals, say twice a year, and would need to be given free access to all government documents. I believe the existence of such an officer, an officer of Parliament not of the executive, would play an important role in limiting the use of the 'public interest' reason for a refusal to give information." (p.426)

Secondly, "select committees of Parliament should be given and be prepared to use teeth to enforce the provision of relevant information to them." Parliament's powers to do so, which were similar to the courts', had fallen into disuse. Use or threat of Parliament's contempt powers could have produced a more positive outcome in some recent cases, such as Leon Brittan's examination by the Defence Committee over the leak of the Solicitor-General's letter in the Westland affair.²³ A final reform could be the transformation of the constitutional conventions into statutory form, thus giving the final word on particular cases to the courts rather than Parliament: "the constitutional obligation, at present non-justiciable, would have become justiciable. Rights would have been created that it would be the duty of the court to enforce." He recognised that this reform was debatable: "But it must be recognised that if the obligations of accountability are not accepted by ministers, both in principle and in practice, as binding, and are not, where necessary, enforced by Parliament, the remedy can only lie in reducing at least that part of our unwritten constitution into statutory form." (p.426).

In the Commons debate on the Scott Report, Ministers adopted the argument that they had put forward in the initial statement on the publication of the Report earlier in February, that it had 'acquitted' ministers of the 'charges' that they had secretly plotted to arm Iraq and had attempted to suppress documents which could have led to a miscarriage of justice.²⁴ The President of the Board of Trade, Ian Lang, admitted that mistakes had been made and lessons would be learnt. He defended the Government's record on 'open government', including the establishment of the departmental select committee system in 1979, and the publication of *QPM* in 1992, and said that existing practices would be reviewed especially on arms sales information (although the Government was still opposed to a general Freedom of Information Act). Showing that "the Government are also willing to consider positively Sir Richard Scott's wider views about ministerial accountability and responsibility," he also invited the Public Service Committee to extend its existing investigation of accountability in relation to agencies to more general issues, on which the Government would submit evidence.²⁵

For the Opposition, the Shadow Foreign Secretary, Robin Cook, agreed with the need for a review of ministerial accountability, but was surprised that, 18 days after he first saw the report, Mr Lang "could still produce no proposal as to what might be done to strengthen ministerial accountability," other than offer to give evidence to a select committee. (c.604) He claimed that the Scott Report had found the Government 'guilty' of the 'charges' the Opposition had made over the past 3 years, and attacked ministers' approach of disagreeing

²³ on which see section II.I of Research Paper 96/27

²⁴ HC Deb vol 272 cc 589-694, 26.2.96

²⁵ c593. On the Committee's report and the Government's response, see below

with Sir Richard's findings (on matters such as misleading Parliament on the guidelines, and on PII certificates) where he had criticised their actions. He concluded (c.617):

The first function of Parliament is to hold the Government to account. The first duty of hon. Members is to defend the rights of Parliament against any Government who threaten those rights. That is why Parliament cannot allow the current Government to ignore the findings of the Scott report: hon. Members were designedly misled, and Ministers consistently failed in their duty of accountability to the House.

Of course the hon. Members on the other side of the Chamber were elected as Conservative Members, but that does not lessen their obligation to defend the rights of Parliament. On the contrary, there was a time when insisting on individual responsibility and upholding the sovereignty of Parliament would have been seen as conservative values.

Tonight Parliament has the opportunity to insist that Ministers must accept responsibility for their conduct in office and to assert that the health of our democracy depends on the honesty of Government to Parliament. That is what we shall vote for tonight. Of course Conservative Members have enough votes to defeat us. If they vote to reject those principles, however, they will demonstrate not only that the two Ministers who have been most criticised in the Scott report should leave office, they will convince the public that this is an arrogant Government who have been in power too long to remember that they are accountable to the people, and that the time has come when the people must turn them all out of office.

Tony Benn, who had opposed the establishment of the Scott Inquiry as an abdication of responsibility by Parliament, asked what would have been achieved if the two Ministers under attack had resigned, in terms of Parliamentary control of the arms trade. For the Liberal Democrats, Menzies Campbell attacked "a Government who refuse to accept any responsibility ... Neither the Ministers involved nor the Prime Minister, who carries ultimate responsibility, will acknowledge any fault," and concluded that "by convention, they had to abide by the constitutional principle of ministerial responsibility. It was not the absence of rules or principles that allowed Ministers to behave as they did; it was a flagrant disregard for those rules and principles."¹ Senior Conservative ex-ministers supported the Government's approach on issues such as the status of the guidelines and the need or otherwise for any alleged revisions to be revealed to Parliament. However Richard Shepherd said that the affair showed the need for a Freedom of Information Act and more powerful select committees, and

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Quentin Davies said that, as ministers had misled Parliament, Mr Waldegrave "must take responsibility for that mistake. Whatever happens tonight, it must be made clear that someone is taking responsibility and that the principle has been restored that Ministers remain fully accountable to the House of Commons."²

Winding up for the Opposition, Margaret Beckett said (c.683):

Whether we like it or not, I believe that Sir Richard Scott has put Parliament itself on trial. He has flung down a gauntlet to the House. In his judgment, he tells us, after three years of careful study, that Parliament was misled. In his judgment, Ministers failed, and failed repeatedly and deliberately, in their duty of accountability to the House, to all those whom we are elected to serve, and hence, in his words, to our democracy itself. Yet Ministers, by their argument and rhetoric, are asking us not just to accept but to applaud the way in which they have acted in our name.

For the Government, the Chancellor of the Duchy of Lancaster, Roger Freeman, urged all parties to assist Parliament (through the Public Service Committee, for example) and the Government in a review of existing practices on the provision of information by Government to Parliament, and defended his colleagues against charges, especially by Quentin Davies, that they had misled Parliament over the arms sales guidelines. He claimed that the Scott Report had "completely vindicated" Mr Waldegrave and Sir Nicholas Lyell: "It said that they acted in good faith, and the Government contend that [Mr Waldegrave] did not mislead." (c.688)

In the parallel Lords debate, Ministers put forward arguments similar to those already described. For the Opposition, Lord Richard analysed the Report on the issue of the misleading of Parliament, and also said that the Attorney-General had to "bear some of the responsibility" for the events surrounding the Matrix Churchill prosecution. He concluded: "Ministers lied to Parliament and apparently no one is responsible. Defendants were placed in jeopardy and apparently no one is responsible. Someone is responsible and they should accept that responsibility and face up to it".³

Lord Jenkins of Hillhead, for the Liberal Democrats, thought that the affair involved more than ministerial resignations (c.1241):

But it is not just a question of individual Ministers - one reason why I have never thought that the rolling of a few heads would settle the matter. It is much more a question of the whole ethos of the Government. There has never in my experience or to my knowledge been a government who have set a lower premium on honour and a higher one on clinging to office at all costs.

Lord Howe of Aberavon reminded the House that "the entire process of government cannot be conducted in a goldfish bowl. Publication to Parliament is publication to a world that is often hostile to this country. So Parliament has on some occasions to be content with a picture that is less than complete and less than completely up-to-date. That is rightly and inevitably so. That is the fundamentally legitimate argument that is not really grappled with or fairly evaluated in this report, nor in certain circumstances accepted as it should have been." (cc 1270-1) The former Cabinet Secretary, Lord Armstrong of Ilminster, considered the case for a Freedom of Information Act, and made the following suggestion (c.1288):

Of course Ministers are, and must be, accountable to Parliament. I favour greater openness in the sense that I should like to see fuller public exposition of the facts and considerations taken into account in making a decision when that decision is announced. It is not possible to give a full statement if that announcement is being made in the form of a Statement in this House or in another place because time considerations do not make that possible. Therefore, such a Statement should be accompanied by a parliamentary paper or some such other document which would give a much fuller account. In my view, that would make for both better government and better public understanding of public issues and policies. But an attempt to apply freedom of information legislation to papers relating to decision-making while the process of making a decision was taking place would for many reasons merely drive the process into channels which a freedom of information Act could not reach. That would be conducive neither to good government nor to public knowledge and understanding of public issues and policies.

VI Roger Freeman's July 1996 Civil Service College speech²⁶

The Public Service minister's speech on 17 July 1996 ranged across a number of issues. On accountability he asked "Is there a strong enough line of democratic accountability running from the executive to Parliament and to the public?", and welcomed the current debate. He wanted to argue against the current criticism of "our conventional approach to Ministerial accountability...I believe that the constitutional convention of Ministerial accountability to Parliament is alive and well." He continued:

There is a clear democratic line of accountability which runs from the electorate through MPs to the Government which commands the confidence of a majority of those MPs in Parliament. The duly constituted Government - whatever its political complexion - is assisted by the civil service which is permanent and politically impartial. Hence, Ministers are accountable to Parliament; civil servants are accountable to Ministers.

That is the system we have in this country. Foreign experience shows that there are other ways of ordering things. However, critics of the British way must address the constitutional consequences for our system of their arguments.

He examined four particular criticisms:

- The first is that a distinction has recently been drawn between the constitutional accountability of Ministers and their direct personal responsibility, producing a so called responsibility gap.
- From that follows the second complaint that Parliament should, through its Select Committees, be able to close that gap by calling named civil servants directly to account.
- Third, it is argued that a direct line of accountability should apply to a particular class of civil servants: the Chief Executives of Next Steps Agencies.

²⁶ OPS PN 97/96, 17.7.96, and Annex A of the Government's response to the Public Service Committee's recent report, HC 67, 1996-97, November 1996. The extracts reproduced are taken from the latter document (paragraph numbers are omitted)

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- Last, and the one which causes me most concern, there is the general criticism that our constitutional doctrine of accountability does not work - the executive is not being effectively held to account by the legislature.

He cited Sir David Maxwell Fyfe's 1954 Crichel Down speech as a recognition over 40 years ago of a distinction between accountability and responsibility:

The distinction is between the **constitutional** fact of **Ministerial accountability** for all that a Department does and the limits to the **direct personal responsibility** (in the sense of personal involvement) of Ministers for all of the actions of their Departments. As in 1954, so now, this is a straightforward practical recognition of the realities of delegation and dispersed responsibility for much Departmental business. Sir Richard Scott in his report had no difficulty acknowledging the validity of this distinction.

Mr Freeman could not understand those critics who concluded from the distinction that "Ministers are responsible for nothing. Ministers are in fact responsible for a great deal, the "central element's of a Department's business," including departmental policies, resource allocation, and "responding to major failures or expressions of parliamentary or public concern." However:

What they cannot sensibly be held responsible for is absolutely everything which goes on in the Department in the sense of having personal knowledge and control of every action taken. Now - as in 1954 - it is not possible for Ministers to handle everything personally. If they were to be held personally responsible for every action of the Department, this would be a great inhibition on sensible modern management methods.

However, even here there is a safety net which, I think, closes the alleged "responsibility gap". Where things go wrong, the Minister is responsible for putting them right and for telling Parliament how he has done so. In particular instances, this could involve the Minister exercising his personal responsibilities in the list I have just quoted in relation to resources and the policy delivery framework. Be that as it may, he would render a constitutional account to Parliament. If Parliament is not satisfied with the account given, the ultimate constitutional sanctions are the motion of no confidence or the withholding of supply. In the House as I know it, the more likely course is the application of political sanctions.....

He rejected the idea of direct accountability of officials to Parliament, and its select committees: "The current position is that civil servants are under standing instructions from the Government to be as helpful as possible to Select Committees **on behalf** of Ministers":

Were civil servants able to account directly to Parliament and to express their own views on the policy advice given to Ministers, the clear logical line of democratic accountability would be broken. Civil servants would be serving two masters, Parliament and Ministers. Once civil servants cease to report to Parliament on behalf of Ministers and begin to speak for themselves, giving their own views when asked about policy options and the advice offered to Ministers, we would - in my view be giving unelected officials the political influence that can only be earned in a Parliamentary democracy through election. Elected Ministers would be eliminated from the accountability loop. I believe that the inevitable outcome would be the politicisation of the civil service. Is this the destination which the critics of our system of accountability want us to reach?

He had "no difficulty in accepting Sir Richard Scott's conclusion that this willingness to supply information is the corollary of our constitutional doctrine of accountability. Ministers will, therefore, continue to expect civil servants appearing before Select Committees on their behalf to be as helpful as possible. Sometimes, they will not be able to give the information sought: it will then be for the Committee to call the Minister to explain why this should be."

However the Government did not believe that Select Committees were "suitable instruments for enquiring into or passing judgment upon the actions or conduct of an individual civil servant," because of officials' employee rights of due process in such circumstances. He also rejected the contention that agency chief executives should be directly accountable to select committees, because of the "very important distinction between managerial and constitutional responsibility." Finally he considered the effectiveness of the doctrine of accountability itself, and the criticism that "it does not actually hold people to account." He personally felt the practical effect of the doctrine: "Rendering account and being held to account are a major part of my daily round.":

All of this has an effect. In accounting for the policies and actions of their Departments, Ministers must be able to hold their own and win the political argument if they are to retain the confidence of their Parliamentary colleagues and ultimately that of the Prime Minister. Some people talk as if the Party system has killed off accountability to Parliament. This ignores the central part which Parties now play as the medium for democratic argument and debate: in answering to Parliament, a Minister must simultaneously win and hold the confidence of his Party colleagues. Failure to do so ultimately leads to his or her departure from the Government.

He believed that "the important thing is not the allocation of blame, the determination of who is personally culpable, the specific resignation. These things are important. Ministers at fault should resign. Civil servants at fault should be subject to Departmental disciplinary proceedings." But (quoting Peter Shore's evidence to the Public Service Committee):²⁷

'the ability of Parliament to correct things as they go wrong seems to me to be, in the long term, in the wider picture, much more important, frankly than in being able to pin-point blame upon a particular Minister.'

He concluded:

Historians have exploded the myth of a golden age in which Ministers took direct personal responsibility for everything done (or left undone) by their Departments, resigning in the event of Departmental failure. Professor S E Finer, in an important research paper on "the Individual Responsibility of Ministers", tested this convention over the period 1855 to 1955 and found resignation on this basis "exceedingly rare".

Then, as now, the proper test of whether our doctrine of accountability is working is the extent to which Parliament is effective in getting policies and systems that are not working changed

²⁷ Emphasis in original

for the better. Of course, opinions on this will tend to diverge according to political viewpoint. But in terms of the general democratic process, I believe that the Government as a whole and individual Ministers are held to account by Parliament. Government, no less than Parliament, should be on the look out for improvements. It is in this spirit that I have invited the Public Service Select Committee to comment on some draft guidance which could be issued to all civil servants responsible for drafting answers to Parliamentary questions. Our purpose is to underline our commitment to providing Parliament with full and accurate information, the corollary of our doctrine of accountability highlighted in Sir Richard Scott's report.

VII The July 1996 Public Service Committee Report²⁸

This report is the most recent and comprehensive official analysis of the subject, and, as such, deserves to be examined in some detail. It began by setting out the general issue: "Ministerial responsibility is a central principle of the British constitution. It defines and prescribes both the relationship between Ministers and officials and also the relationship between Ministers and Parliament" (para 1). It then immediately considered the difficulties surrounding the concept (paras 2-4):

There have always been elements of ambiguity and confusion in the convention of Ministerial responsibility. The first of these involves its status. There is no comprehensive or authoritative statement of it which has binding force, and it cannot be enforced by legal (as opposed to political) sanctions. As a result, the way in which it is used tends to be variable and inconsistent, and it has often been as useful politically to obscure in practice the convention as to clarify it. Second, that inconsistency has helped to ensure that it has never been very clear what precisely individual Ministerial responsibility *means*: what a Minister has to do in order to discharge his responsibility through Parliament. Third, it has never been entirely clear, either, how far a Minister's formal responsibility for the actions of officials subordinate to him extends.

3. Since it was first articulated, these difficulties with the convention have been exacerbated by changes in government and in Parliament. Government has vastly expanded in its size and in its functions and it has become impossible to maintain that Ministers can be regarded as personally responsible for all of the activities of their departments. The dominance of party organisation and government's increased control over time in the House of Commons mean that it is more difficult now than it was in the mid nineteenth century to hold Ministers effectively to account.

4. The ambiguities which surround the convention have ensured that there have been regular disputes over the extent to which individual Ministers can be regarded as responsible for failings within their departments; such arguments are scattered over the political history of the last century and a half. But changes to the way in which government is organised and public services are delivered are now throwing the problems with the convention into high relief; many now question whether it needs some radical rethinking if government is to remain properly accountable.

²⁸ *Ministerial accountability and responsibility*, 2nd report of 1995-96, HC 313, July 1996

It examined the **theory of ministerial responsibility**, which was "based on an assumption of close involvement by Ministers in the work of their departments", perhaps appropriate to the 19th century, but certainly not to the public service in the welfare state era: "modern government is so complex and a Minister's functions so various, that Ministers must delegate most of them. Much of the work of each department is done with little reference to the Minister. Mistakes will naturally occur in that work .. and they may excite political interest and involvement. In such cases, in what sense can Ministers be regarded a 'responsible' for the conduct of their officials?" (para 11). It cited Sir David Maxwell Fyfe's 1954 Crichton Down speech,²⁹ commenting that, though it has attained authoritative status as an interpretation of the concept, "it is nonetheless confusing and ambiguous, particularly so on the extent to which a Minister's responsibility for the conduct of his officials extends to the general oversight of the work of the department" (para 13).

Some of the difficulty arose because of "the vagueness and ambiguity of what is meant by the word 'responsible'", giving rise to the government distinction between *responsibility* and *accountability*. The committee was not convinced that official explanations of this distinction (such as given in response to the Defence Committee's Westland inquiry³⁰ and embodied in the 1987 'Armstrong Memorandum'), were as clear as ministers believed. Recent developments such as the creation of *Next Steps* agencies and the Scott Inquiry had seen further attempts at clarification: "these have largely been directed towards applying the word 'accountability' to a Minister's duty as the representative in Parliament of part of the executive, while limiting 'responsibility' to actions taken personally by the Minister" (para 15). It cited the Government's 1995 White Paper *Taking forward continuity and change* as the most recent and elaborate official interpretation,³¹ describing it as "undoubtedly clearer" than the explanation in the Armstrong Memorandum, "yet the distinction remains somewhat confusing because it makes use of common words in different ways" because such words, including 'answerability' are often used to mean roughly the same thing. Nevertheless the Committee recognised that the Government's distinction had received support from, for example, Professor Brazier and Lord Howe of Aberavon. They commented:

18. We are less certain that the distinction between "accountability" and "responsibility" is always a useful one. For the substance of it is a distinction between those matters on which a Ministers have merely to provide an explanation to the House, and those matters on which failures may be regarded as their own fault and which may justifiably lead to the Minister's resignation. In many, probably most, cases that distinction is easily made. A Minister is obviously responsible for deciding on what policy to follow, or the resources allocated to

²⁹ Relevant extracts of which are reproduced in Appendix A of this Paper

³⁰ Cmnd 9916, October 1986, esp para. 40:

40. The basic principles on this matter are clear:

- Each Minister is responsible to Parliament for the conduct of his Department, and for the actions carried out by his Department in pursuit of Government policies or in the discharge of responsibilities laid upon him as a Minister.
- A Minister is accountable to Parliament, in the sense that he has a duty to explain in Parliament the exercise of his powers and duties and to give an account to Parliament of what is done by him in his capacity as a Minister or by his department.
- Civil servants are responsible to their Ministers for their actions and conduct.

³¹ Cm 2748, January 1995, pp 27-8 (reproduced above)

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particular budgets, for example. But in other cases, the distinction is hard to draw. The most difficult area is the one with which Maxwell-Fyfe grappled: to what extent can Ministers be said to be responsible (in the sense that it may be regarded proper that they lose their job if something goes wrong) for essentially *administrative* failures within a department?

The report said that "Ministers must accept in some degree that they are personally responsible for the overall way in which their Department is administered. They cannot, indeed, be blamed for individual failures at operational level; but they might be blamed for a broader pattern of incompetence Ministers cannot be blamed for each failure connected with the work of the department; but if such a failure were great enough, many feel it proper that the Minister resign" (para 19). It continued:

20. What Ministers must never do is to put the blame onto civil servants for the effects of unworkable policies and their setting of unrealistic targets. If, when things go wrong, it is held that Ministers are not to blame because they did not (knowingly) mislead Parliament, and civil servants are not to blame because they acted as servants of Ministers, then the unsatisfactory outcome is that nobody is to blame. There is clearly something unsatisfactory about a doctrine of Ministerial Responsibility that can issue in such a conclusion.

21. If the point of drawing a distinction between 'accountability' and 'responsibility' is to limit the extent to which blame might be attached to Ministers for failings in their departments, then it is unsuccessful. To the extent that it protects Ministers from being seen as personally to blame for minor failings (an incorrect social security payment, for example) it is no more than a statement of the obvious: few would seriously advance the proposition that a Minister should resign in such circumstances. To the extent that it implies that it is possible to draw in practice a clear line between minor failings at operational level and a more systemic failure, experience suggests that it is, at best, hopeful. **It is not possible absolutely to distinguish an area in which a Minister is personally responsible, and liable to take blame, from one in which he is constitutionally accountable. Ministerial responsibility is not composed of two elements with a clear break between the two. Ministers have an obligation to Parliament which consists in ensuring that government explains its actions. Ministers also have an obligation to respond to criticism made in Parliament in a way that seems likely to satisfy it - which may include, if necessary, resignation.**

It then moved on to the politically sensitive issue of **ministerial resignations**:

22. Ministerial responsibility and resignation is not a formal matter, in which certain particular actions or omissions will result inevitably in a Minister's departure from government. A Minister's survival in his job depends primarily on the satisfaction of his Ministerial colleagues - particularly the Prime Minister - and of his fellow Members of Parliament. Parliament has no formal ability to remove a Minister; and Members can only place pressure on him, and the rest of the Government, to ensure his resignation or removal. Many in the House may regard a Minister as personally culpable in one way or another for some mistake or mishap. But so long as his Ministerial and party colleagues are prepared to defend him, the chances of obtaining his removal are minimal. If he loses their support, however, his fall is inevitable. As Professor S.E. Finer put it, "if the Minister is yielding, his Prime Minister unbending and his party out for blood - no matter how serious or trivial the reason - the Minister will find himself without Parliamentary support. This is a statement of fact, not a code. What is more, as a statement of fact it comes very close to being a truism: that a Minister entrusted by his Prime Minister with certain duties must needs resign if he loses the support of his majority.

It noted that "the history of British politics in the twentieth century confirms that there may be no necessary connection between Ministerial culpability and Ministerial resignation. Most recent Ministerial resignations have not, in fact, been as a result of perceived failures in policy, but as a result of private actions, rather than public ones" (para 25):

26. Ultimately, the question of whether a Minister should or should not resign for a failing that has happened within a department cannot, as a matter of course, be treated as one capable of a clear answer. An opposition may find it expedient to accuse a Minister of fault, even when culpability for the matter at issue appears to be complex and difficult to gauge. To do so is an important device in its political armoury. Equally, while Ministers must not be allowed to evade justified blame, whether or not they resign must always be a question in the hands of those on whose confidence they rely. Apportioning political blame to Ministers is a political activity, not a legal one, and we believe that it should be dealt with in a political manner. Sir Richard Scott commented on the debate in both Houses which followed the publication of his Report: "it was a serious debate. 'It was of course overladen by the politics of the situation, but that is to be expected. Parliament is a political place'. Mr Shore also took a pragmatic view of this situation: he told us (using the Government's definitions) "we undervalue accountability to Parliament and put far too high a premium on responsibility, personal responsibility, of Ministers"; "the ability of Parliament to correct things as they go wrong seem to me to be, in the long term, in the wider picture, much more important, frankly, than being able to pin-point blame upon a particular Minister". We agree. **Proper and rigorous scrutiny and accountability may be more important to Parliament's ability to correct error than forcing resignations.**

But the Committee warned that "this does not mean, however, that Ministers should be allowed to set the terms of the debate. Unless it is able to establish the facts, the question of the extent to which Ministers should be blamed will remain obscure" (para 27). They were clear that the consequences of a Minister knowingly misleading Parliament should be resignation, because "misleading Parliament, or the public, about the activities of the Government in response to a reasonable request, is something for which a Minister must remain personally responsible" (para 28). When ministers inadvertently mislead the House "it is conventional, and essential, for them to correct the error at the earliest possible opportunity, and to apologise to the House for it" (para 29).³² "There will always, however, be plenty of room for argument about whether or not Parliament has been misled," as in the events examined in the Scott Inquiry (para 30). The Committee then turned to the heart of the issue as they perceived it:

31. The pursuit of Ministerial resignations is important as part of a process of enforcing political accountability, but too great a concentration on it obscures the wider importance of the day-to-day business of holding the executive to account in Parliament, to ensure that it is kept under proper democratic control. Dr Philip Giddings of the Department of Politics, University of Reading, argues that Parliamentary accountability has "a variety of objectives". At one level, its purpose is simply to secure information about and explanations of what has or has not occurred. But it may also be regarded as a way of exerting pressure for change, or a means of attributing blame or praise for government actions. It is seen as a means of influencing the decision-makers who are being held to account, so that they will act in a way which is responsive to the wishes of those who are holding them to account. Ministers, in

³² Presumably a similar convention would be expected to apply in the Upper House

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short, have to give information; but they also have to ensure that they are sufficiently responsive to the concerns of Members of Parliament in order to maintain their confidence. Sir Richard Scott said "I do not regard the debate - and I do not want to underestimate it - between accountability, responsibility, blame, as being the key and most important feature of Ministerial accountability. I think willingness on the part of Ministers to inform Parliament and through Parliament, the public, or perhaps sometimes the public directly, of the matters in respect of which they are accountable is critical".

32. The theory of Ministerial responsibility should keep pace with the contemporary reality, if it is to retain its credibility. It would give greater clarity if the Government were less coy in its definition of what Ministerial responsibility means. As we have said, we believe that Ministers have a general responsibility to Parliament for the work of their departments which cannot be neatly divided into spheres of 'personal responsibility' and 'constitutional accountability'. There are, it is time to say, two sides to the obligation of Ministers for those matters which come within their responsibility - even if they cannot be simply distinguished. They may be referred to as the obligation to *give an account*; and the liability to *be held to account*. **We believe that the following represents a working definition of "Ministerial responsibility".**

Ministers owe a fundamental duty to account to Parliament. This has, essentially, two meanings. First, that the executive is obliged to give an account - to provide full information about and explain its actions in Parliament so that they are subject to proper democratic scrutiny. This obligation is central to the proper functioning of Parliament, and therefore any Minister who has been found to have knowingly misled Parliament should resign. While it is through Ministers that the Government is properly accountable to Parliament, the obligation to provide full information and to explain the actions of government to Parliament means that Ministers should allow civil servants to give an account to Parliament through Select Committees when appropriate - particularly where Ministers have formally delegated functions to them, for example in the case of Chief Executives of Executive Agencies.

Second, a Minister's duty to account to Parliament means that the executive is liable to be held to account: it must respond to concerns and criticism raised in Parliament about its actions because Members of Parliament are democratically-elected representatives of the people. A Minister's effective performance of his functions depends on his having the confidence of the House of Commons (or the House of Lords, for those Ministers who sit in the upper House). A Minister has to conduct himself, and direct the work of his department in a manner likely to ensure that he retains the confidence both of his own party and of the House. It is for the Prime Minister to decide whom he chooses as Ministers; but the Prime Minister is unlikely to keep in office a Minister who does not retain the confidence of his Parliamentary colleagues.

33. As we have argued, the attempt to ensure Ministers are accountable by seeking their resignation may be an informal and highly political affair. It cannot be reduced to firm rules and conventions. Nevertheless, as our definition of responsibility implies, it remains an essential component of the control of government. It is, in effect, the final stage in a process of accountability. But while it may attract more attention, the pursuit of Ministerial resignations is only one part, and a very small part, of the day-to-day business of accountability. It is with this that, in the remainder of this Report, we will be concerned. The

system of Ministerial responsibility and accountability is intended to ensure that Parliament can exercise proper and effective oversight of the executive. Is it doing so?

The report examined **ministerial accountability in terms of *QPM***, a document it described as "the only guidance issued on how a Minister should discharge his duty of accountability", and noted that its obligation on ministers not to mislead is unqualified: "while there are claims that it has been justifiably breached, and the breach accepted by the House, whether or not this was in defiance of the requirement is disputed" (para 34). Ministerial practice on the answering (or non-answering) of PQs was then considered, including ministers' (especially in *QPM*) praying in aid of 'established Parliamentary conventions': "there is no longer anything that can be called a 'Parliamentary convention' which determines which Questions ministers may answer; there are only Ministerial conventions", and such references in *QPM* should be removed (para 39). Similar examination of references to 'Government codes of practice' (ie that on access to government information)³³ led to the view that "we do not believe, however, that the Code of Practice should be used to restrict the obligation on Ministers to give a full account of their actions, decisions and policies to Parliament; Ministers should always consider carefully the balance of the public interest against the possible harm arising out of disclosure" (para 40).

After examining complexities such as the veracity of incomplete Parliamentary answers and the like, especially in the light of the Scott report, the Committee commented that "if one accepts that answers should not normally be refused, but also that in certain circumstances there are things that it would be better not to say in public, the answering of Parliamentary Questions will always be a complicated exercise in determining the limits of disclosure" (para 47). It recognised the difficult balancing act in weighing the public interests in disclosure and in confidentiality, as in foreign and defence policy matters:

49. In some cases such reasons undoubtedly will outweigh the public interest in disclosure: but the public interest in disclosure is a powerful one, and should not be lightly overridden. As Sir Richard has said, balancing the public interest in disclosure with the public interest in confidentiality is a duty which must often be difficult to discharge. The decision is, at present, always entrusted to Ministers, who are advised by civil servants. Ministers' decisions on what might be disclosed and what should not be are open to audit by the Parliamentary Commissioner for Administration through the Code of Practice on Access to Government Information. We discuss this further below (para. 145). In time, the Code may provide some clarity about how the public interest might be interpreted, particularly as the decisions of the Ombudsman on individual cases create a body of case law. Until then, however, it is Ministers who must use their own judgement in weighing considerations of "harm" against considerations of "the public interest". As Mr Freeman said, Ministers may be constantly reviewing the balance between disclosure and non-disclosure, and that balance may change over time". Ministers are, we believe, keenly aware of their obligation to be fully accountable to Parliament. Yet they are also aware of many other considerations, some of them proper and others less so, which may induce them to be cautious in disclosing information. Naturally, therefore, it will be difficult to avoid at least the suspicion that considerations of political or administrative convenience will often influence the decision. On many, perhaps most of these difficult questions, the motives involved in the decision whether

³³ See now the 2nd ed, January 1997, Deposited Paper 4374

or not to reveal information may be mixed, including international considerations as well as domestic embarrassments.

50. Ministers who approve the answers to Parliamentary Questions, and civil servants who draft them, should be prepared to be more open and clear in their answers than they have hitherto been prepared to be. The Government has accepted, in evidence to us, that it would be helpful to provide clear and open practical guidance on how the conventions on providing information to Parliament should be applied by civil servants who have to draft answers to the large number of Parliamentary Questions tabled each session. They sent us a first draft of their proposed guidance for comment. The draft is printed as an Annex in this Report (Annex 3). They also sent us copies of such guidance as is already issued by individual departments. Most of this concerns the mechanics of answering Parliamentary Questions. We were somewhat surprised that "clear and open practical guidance" on applying the conventions, such as they are, did not already exist. The proposed guidance is clearly influenced by comments in the Scott Report, particularly on the nature of "answers which are literally true but likely to give rise to misleading inferences". We are most concerned with the implication that information can be omitted "in line with established Parliamentary convention". We have already commented on the meaninglessness of this phrase (para. 39): what is meant is the practice of Ministers in answering previous Parliamentary Questions. As with *Questions of Procedure for Ministers*, the only points of reference required are to the law and the Code of Practice on Access to Government Information. The statement that information should not be omitted "merely" because disclosure "could lead to political embarrassment or administrative inconvenience" might imply that it could be a consideration in deciding whether to refuse information. Mr Freeman assured us that the point was intended to ensure that civil servants knew that "in terms of political expediency, party political embarrassment, that is just not an issue". "Where", the draft guidance notes, there is a "particularly fine balance between openness and non-disclosure, and where the draft answer takes the latter course, this should be explicitly drawn to the Minister's attention" as should be done if it is proposed "to reveal information of a sort which is not normally disclosed".

It was, according to the committee, for the **Prime Minister** "to ensure that the Members of his Government conform to the highest standards of democratic accountability". The Government had said, in its response to the Nolan Committee, that an explicit statement that it was for the Prime Minister to determine whether ministers had breached the *QPM* obligation went too far, as it made the PM's relationship with ministerial colleagues as one of invigilator and judge and (as Mr Freeman told the Public Service Committee) implied a break in the 'twin responsibility' of a minister to Prime Minister and Cabinet and to the Commons.³⁴ The Committee concluded that "the Prime Minister has to take responsibility to ensure that ministers live up to the standards required of them, and to decide on whether their performance is good enough although, in judging them, he will have to take into account the extent to which Ministers retain the confidence of the House of Commons" (para 52).³⁵

The Committee thought it "extraordinary .. that the only explicit statement of how Ministers are expected to discharge their obligations to Parliament appears not in a Parliamentary document, but in a document issued by the Prime Minister ... Not only does this ensure that

³⁴ See Q1141, HC 313-II, 1995-96. The revised text of the relevant section of *QPM* states that "And they [ie ministers] can only remain in office for as long as they retain the Prime Minister's confidence."

³⁵ The report does not appear to examine how such principles should apply in relation to Lords ministers or, indeed, to a Prime Minister directly

Questions of procedure for ministers is rarely read as a statement of the principles that Ministers ought to follow; it also contributes to an illusion that the obligations on Ministers in relation to Parliament are derived from the instructions of the Prime Minister, and not from Parliament itself" (para 53). The convention that Ministers should not mislead Parliament "is in fact derived ultimately from the concept of a 'contempt' of Parliament (para 54),³⁶ and they recommended "that the House underlines the obligations on Ministers to be open with the House, and not to mislead it, by passing a Resolution which would state the obligation, how it is derived, and how far it extends" (para 55). They recognised that such a resolution directed at ministers could undermine the general obligations, enforced by Parliament's contempt jurisdiction, on all Members, whether ministers or not, but believed that a resolution could be framed so as to be sensitive to these concerns.

The report contains a draft of such a **Commons resolution**, the text of which recognised that it could only apply to its own proceedings, and could not, in the absence of legislation, seek to regulate conduct of people, including Members, outside Parliament (paras 58-60):

Therefore, it may lay down rules concerning Ministerial conduct in Parliament, but not concerning the broader obligations of Ministers towards the Prime Minister, the Government, their party or, indeed, the public. The House could also set down rules governing the provision of evidence in Parliament by civil servants, or other witnesses.

59. We have preferred a general statement of principle to detailed regulation of all the circumstances under which Ministers (or those speaking on their behalf) give information in the House of Commons. The latter would, we believe, be inappropriate for a Resolution of the House, although it might be for the Committee of Standards and Privileges to give further guidance on the interpretation of the Resolution. A more difficult question is the extent to which the Resolution should define the ability of Ministers to withhold information from the House. It is plainly not possible to define in advance all of the circumstances in which it might be necessary and legitimate to withhold information; even were such an enterprise possible, it would be inappropriate in a Resolution. A different solution, which we have adopted, is to make clear what reasons for withholding information will be regarded as not proper reasons. We consider further below, in our discussion of Freedom of Information, the extent to which information may be disclosed (paras. 153-165).

60. **We recommend that the Resolution on accountability be in the following terms:-**

All Members of this House and all witnesses who come before it are obliged not to obstruct or impede it in the performance of its functions nor to obstruct or impede Members or Officers of the House in the discharge of their duty.

This applies to Ministers, and to civil servants giving evidence in Parliament, just as it applies to any other person; and because Ministers have a duty to account to Parliament for the policies, decisions and actions of their

³⁶ The use of the word 'convention' here by the Committee is perhaps slightly unfortunate, as it appears to be used, contrary to its usual meaning in constitutional law, as an enforceable (however theoretically) obligation subject to sanctions. On contempt generally, see chapter 9 of *Erskine May*. On constitutional conventions generally, see Research Paper 96/82, 18.7.96, *The constitution: principles and development*, section IV.A

departments and agencies, the House will regard breaches by them of the obligation described above as particularly serious.

Ministers must take special care, therefore, to provide information that is full and accurate to Parliament, and must, in their dealings with Parliament, conduct themselves frankly and with candour. The House recognises that Ministers may need, upon occasions, to withhold information, but believes they should do so only exceptionally. They must not knowingly mislead Parliament and they should correct any inadvertent errors at the earliest opportunity. The House will expect Ministers who do knowingly mislead it to resign. Both Ministers and civil servants should be as cooperative as possible with Parliament and its Committees, and ensure that Committees and individual Members of Parliament receive the information and help they require from their departments.

The committee believed that "a resolution on accountability will .. be a powerful means of reminding Ministers of the rights of the House and their own responsibilities" especially in relation to the provision of information in reply to PQs. However they recognised that the full contempt power is rarely applied, and that this could make formal enforcement of the proposed resolution problematic, especially in relation to ministers, where political considerations (especially in the context of party discipline in the House) may well be more important than quasi-judicial ones. Therefore the report contains a consideration of a possible **new procedure** which could enforce the resolution (paras 63-8), by allowing Members (and only Members) to complain to the Parliamentary Ombudsman "directly concerning the withholding of information by a government department, without having to act through another Member."³⁷ However giving the PCA power to investigate statements made in Parliament "is a separate and more complex question", for administrative and functional reasons, although this could be overcome by the appointment of a separate Commissioner. Such 'external' adjudication could be said to be essentially political rather than quasi-judicial function, and might diminish the responsibility of Parliament and its committees.³⁸ A system geared more to monitoring rather than enforcement, with the publication "of an Annual Report on the reasons used to justify refusals to provide answers to parliamentary Questions seems a modest and eminently sensible one ... This might bring to the attention of Members the conventions that Ministers are using in their refusals to provide information, and show up occasions on which decided not to abide by those conventions for whatever reasons." Therefore it proposed that the Table Office provide each session a memorandum to a select committee listing such answers to PQs (para 68),³⁹ and recommended that the Government make it a standard practice to explain the grounds for withholding information when it does so in parliamentary answers (para 70).

³⁷ para. 65. This would require an amendment to the *Parliamentary Commissioner Act 1967*. The PCA has statutory powers to demand official papers, and also has a key role in adjudicating on the operation of the 'open government' code of practice

³⁸ And, in the absence of legislation, potentially be a breach of article 9 of the *Bill of Rights 1689*, protecting Parliament's privilege of free speech? On this, see Research Paper 96/61, 16.5.96

³⁹ The report also considered alternative schemes, such as use of the Intelligence and Security Committee, a proposal it rejected on democratic accountability grounds as the ISC, although composed of parliamentarians, was a statutory, not a Parliamentary, body (para. 69)

The report then turned to the **accountability of civil servants** in theory and practice: "civil servants exercise many of the powers entrusted to Ministers under statute, but they do so because the Minister has delegated those powers to them. The power remains the Minister's. As the people who in theory exercise the powers, as well as the only people easily able to represent their department in Parliament, Ministers are held to be the sole conduits for discharging the executive's responsibility to Parliament. The Government has keenly sought to uphold this principle and Parliament, or its Committees, have often felt it important to preserve a clear focus for accountability."⁴⁰

The 'rules' by which the **provision of information is given to Parliamentary Committees by officials (the 'Osmotherly Rules')**, were examined.⁴¹ The Committee noted that "the convention is used to restrict Select Committees' access to civil servants and to limit what civil servants may say when giving evidence" (para. 72), and that it has been claimed that this prevents effective scrutiny by Parliament, as in the Westland affair of 1985-86. The rules mean "that officials are bound to present government policy on behalf of their departments and not to undermine it" and to explain rather than discuss the merits of policy especially in politically contentious areas. This can afford particular difficulties for specialist officials giving evidence on professional or technical aspects of policy (para. 74).

Another significant consequence of the rules and the general doctrine of responsibilities is "the resistance of government to agree to a request from a Select Committee that a particular, named, civil servant gave it evidence in cases where the Committee is seeking to inquire into some alleged misdeed by the department". The rules state that it is 'customary' for Ministers to decide which officials should appear and to offer alternative witnesses as appropriate, and recognise the risk of an "unprecedented" impasse between a Committee insisting on a witness (perhaps enforced by an order of the House) and the official remaining 'subject to ministerial instruction on how to answer questions and on what information to disclose'. The Committee commented that "this interpretation of the doctrine has caused difficulties for Select Committees in the past, although it is fair to say that conflicts between government and a Committee have been rare" (para. 75). It also examined the issue of evidence from retired officials (para. 76). The report noted that "the relationship between Select Committees and officials is not, however, always quite as restrictive in practice as theory might make it appear",⁴² and that "civil servants over recent years have become more visible and more often personally identifiable", partly due to the "increasing access to civil servants by Select Committees" and the naming of officials by the PCA and others (para. 79).

The rules had been regularly revised, often in response to comments by Parliamentary committees: "they now do contain a statement of the overall duty of officials to be as helpful as possible to Parliament..." (para. 80). Many select committees "said that they enjoyed a good relationship with departments, and that departments had generally been forthcoming and

⁴⁰ para. 71. The report notes the exception to the rules of the direct relationship of Accounting Officers to the PAC

⁴¹ For a discussion of this matter see Background Paper 298, September 1992, *Select Committees*, and see now Research Paper 97/4 *The Accountability Debate: Next Steps Agencies*. The latest version of the 'rules' is the January 1997 edition, Deposited Paper 4375.

⁴² Para. 77. It cited the special case of the Accounting Officer's direct accountability (paras. 77-8)

cooperative" (para. 81). The Committee believed that "a wholesale review of the Osmotherly Rules, is, indeed, probably unnecessary" but, on the point of the provenance of the 'rules' it argued that "making clear in a separate Parliamentary Code the extent of the duty of officials to provide information seems to us to be the most effective means of making the point that Parliament has not in any way formally consented to a restriction on the amount of information it may receive". Therefore they recommended that officials "should be brought within the ambit of our proposed Resolution for Ministers. This is to underline the fact that as witnesses before a Committee, civil servants are themselves bound by the obligation not to obstruct or impede Members or Officers of the House in the performance of their duty" (para. 82).

More generally, the Committee noted that "in theory, at least, the powers of Select Committees to obtain Persons, Papers and Records are of wide extent, and the executive should not seek to block them by political means. We recommend that there should be a presumption that Ministers accept requests by Committees that individual named civil servants give evidence to them" (para. 83).

If then considered the **role and operation of select committees** more closely.⁴³ Even if the favourable views of the 1990 Procedure Committee review of the select committee system were accepted "many remain concerned that Select Committees are not as effective in carrying out their tasks of scrutiny as they might be; and there is a doubt.... that the Select Committees can keep pace with an increasingly sophisticated and increasingly professional executive" (para. 125). In particular, they considered issues such as committees' ability to obtain documents from government departments (paras. 126-130), proposing acceptance of the 1978 Procedure Committee's recommendation for a procedure which would "restore to select committees, in certain specified circumstances, the right, which formerly belonged to any backbencher, to move for an Address or an Order for a Return of Papers" (para. 130). The Committee also examined the case for '**Parliamentary commissions**' to investigate "evidence of some large-scale policy failure by the Government" (para. 131). This is particularly relevant in the context of recent high-profile arms sales inquiries, and the use by ministers of an *ad hoc* non-statutory inquiry under Sir Richard Scott to examine the 'arms-for-Iraq' affair.⁴⁴ The Trade and Industry Committee, in its BMARC report, had suggested a form of 'Parliamentary commission' separate from the departmental select committees.⁴⁵

We agree with the Trade and Industry Committee that the problem is not simply one of resources, but is one of the ability of Members to commit sufficient time to the task of a full-scale investigatory inquiry, particularly without endangering the more long-term process of a dialogue with its department on expenditure, administration and policy. Such inquiries require the detailed and effective examination of witnesses, which can only be done by Members who have a good command of the evidence before them. Is there a better way for Parliament to investigate the failings of government?

⁴³ Section V of the report, on agencies, is covered in Research Paper 97/4

⁴⁴ on this, see Research Paper 96/22, 9.2.96 *Forms of investigatory inquiry and the Scott Inquiry*

⁴⁵ para. 132. The T & I Committee Report is HC 87, 1995-96

The Public Service Committee supported this proposal for "inquiries set up at the instigation of Parliament to establish factual information on complex subjects which would otherwise occupy too much of Select Committee's time," and looked forward to an examination of the proposal by the Procedure Committee (para. 133).

They also examined the general issue of **select committee resources**, as "the bread-and-butter work of Select Committees... is in many ways much more important than the sort of high-profile investigatory work for which powers to order the production of documents are relevant. The scrutiny of the work of a department, consideration of the value and the implementation of its policies, provide for the sort of dialogue between Parliament and government that ensures proper accountability in practice".⁴⁶ The Committee recognised that select committees themselves had not argued for "a great expansion on the resources available to them", and this accorded with the view of the 1990 Procedure Committee review,⁴⁷ but "there is, we believe, concern about the extent to which Select Committees, with the resources at their disposal, can be effective in asking the right questions of government, and maintaining a constructive dialogue with their departments.... One of the things that has struck us most about the current inquiry is the sheer volume of paper generated by modern government. Before the days of open government, Committees did not need extra staff because much of this paper was not available to it. Now, however, the main difficulty for Committees is one of distinguishing the wood from trees" (para. 142). They continued:

Committees would be helped by a better ability to scrutinise the performance of their departments, a greater ability to understand its administration, and its expenditure than they have at present, and we believe that a modest expansion in the staff resources available would give them that. The Chairman of the Environment Committee raised a related, but rather wider problem. The wide range of the Environment Committee's remit meant that "however hard the Committee works, it is simply not possible to monitor in depth the full range of responsibilities of the Department of the Environment and its agencies, which means that some parts of the Department inevitably escape scrutiny for perhaps several years at a time". **We recommend that the Liaison Committee study ways of improving the Parliamentary Scrutiny of agencies especially where a single department has a large number of agencies.**

More generally, the Committee recommended that "the Liaison Committee inquire into the operation of Select Committees...[including] the effectiveness of Select Committees and how this might be improved, including whether Select Committees require an expansion in the resources available to them" (para. 143).

VIII The November 1996 Government Response⁴⁸

⁴⁶ para. 134. The report went on to examine greater cooperation between the NAO/PAC and departmental committees: paras. 136-140. (on which see Background Paper 298, 7.9.92, section B(vi))

⁴⁷ On which see Background Paper 298, Section B(vii)

⁴⁸ 1st special report of the Public Service Committee, 1996-97, HC 67, 1996-97, appendix

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The Government welcomed the Public Service Committee's report as a "constructive contribution to a subject of continuing fundamental importance to a Parliamentary democracy," and shared the Committee's premise that "the country must have arrangements under which the Government remains properly accountable" (para. 1), and continued:

2. In preparing its response, the Government has considered the Committee's Report with great care, representing as it does the most thorough examination of Ministerial accountability and responsibility by Parliament in recent years. The Government notes that the Committee has not sought to re-define the basic principles of Ministerial accountability in theoretical terms, but has instead followed what it describes as a pragmatic approach in setting out a "working definition" of the subject, which is subsequently reflected in a proposed Resolution of the House.

3. The Government agrees with many of the principles underlying the working definition, and shares the Committee's view that there could be value in the House making explicit how it expects Ministers to discharge their responsibilities to Parliament. The Government will initiate further discussion on a cross-party basis to this end with a view to bringing forward an appropriate motion in due course.

It "welcomed the common ground which exists between the Committee's recommendations and its own position on Ministerial accountability" as set out in recent statements (para 4):

5. In particular, the Government welcomes the Committee's acknowledgment that effective scrutiny and accountability are secured by the giving of a full account through a rigorous policy on openness rather than an insistence on the ability of Parliament to apportion blame and impose sanctions, because without such an account there can be no clearly understood basis for determining whether such actions would be appropriate.

The Government also welcomed the Committee's support for the *Code of Practice on Access to Government Information*, "and will now take steps... to ensure that throughout Government the Code is followed as the clear, recognised minimum standard for providing information to Parliament, and in setting out the reasons for withholding information, on those occasions when this is necessary" (para. 6). The Government had reviewed the various Codes and other guidance; had revised *QPM*, and produced the new *Guidance on answering Parliamentary Questions*.⁴⁹

However, there was one clear difference between the Government and the Committee:

7. The response addresses clearly the one significant difference between the Government and the Committee's proposed Resolution - the relationship between Parliament and the Civil Service. Here, the Government believes that the implications of the Report, and in particular the recommendation that civil servants should be brought within the ambit of the proposed Resolution for Ministers, would be to create a shared line of direct accountability to Parliament between Ministers and civil servants. The Government does not accept the Committee's apparent assumption that this aspect of accountability could be changed in this way whilst still maintaining the central principle of Ministerial responsibility in the form recognised by both

⁴⁹ Annexes B and C, reproduced as appendices C and D of this Paper. See Research Paper 97/5. The latest version of the Open Government code of practice is the January 1997 edition, Deposited Paper 4374.

the Committee and the Government. Specifically, the Government believes that such a development would lead to civil servants becoming (as the Deputy Prime Minister said in evidence to the Committee) "effectively another political force". The Government could not view such a development as compatible with its commitment to a permanent, non-political civil service.

Another point of distinction was over the Committee's belief that there was an 'accountability gap' or 'lacuna' in respect of officials:

8. There is, in addition, one other aspect of responsibility and accountability raised in the Report on which the Government wishes to comment. This is the suggestion (paragraphs 20 and 73) that a gap or "lacuna" exists regarding the accountability of officials in cases where Ministers cannot themselves be held to be directly responsible. The Government is strongly of the view that the nature of the conventional principle of accountability - that Ministers are accountable to Parliament and civil servants are in turn accountable to Ministers - ensures that no such "lacuna" exists.

9. If failures occur or errors are made, it is for Parliament to consider whether the Minister is personally responsible and, if so, what constitutes an appropriate sanction. Where, however, Parliament decides that the Minister is not personally responsible, it will rightly expect an account from the Minister of what steps have been taken to correct the error and prevent recurrence, including reporting (which may be on a confidential basis) on any disciplinary action.

10. By contrast, the assumption of a responsibility gap implies that it is for Parliament to "catch" whomever it can - whether Ministers or officials. This would undermine the fundamental principle that civil servants are servants of the Crown, accountable to the duly constituted Government of the day, and not servants of the House, and could risk making decisions about the responsibility of individual civil servants directly dependent on Party politics. It could thus jeopardise the well-established relationship between Parliament, Ministers of the Crown and the Civil Service. This is in contrast to Non-Ministerial Government Departments and Non-Departmental Public Bodies (NDPBs), which are generally set up by statute and whose staff are accountable to the statutory office-holder or boards, who in turn are responsible to Parliament for discharging the statutory duties of the body. The Government's view on this important issue is further spelled out in its responses to Recommendations 26 and 29 of the Committee's Report.

The detailed response to the Committee's recommendations was as follows:⁵⁰

1. Distinction between accountability and responsibility:

The Government agrees that it is not always possible to make an absolute distinction between constitutional accountability and personal responsibility. Nonetheless, highlighting those matters for which a Minister bears a direct responsibility from amongst all the matters for which he remains obliged to give an account describes modern practice and so provides Parliament and the public with a broad, practical framework against which to judge Government's continuing endeavours to remain properly accountable. Like the Committee, the

⁵⁰ The list is taken from chapter X of the Committee's report, HC 313, 1995-96, pp lxxx-lxxxiii, to which the paragraph numbers correspond; the headings summarise the relevant issue. Issues such as agencies, and 'open government' are not examined here (on which see Research Papers 97/4 and 97/5).

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Government sees this as a matter of the highest democratic importance and will continue to ensure that Ministers fully discharge their obligations to account to Parliament for their and their Departments' policies, decisions and actions and to respond to criticism made in Parliament. It is for Parliament to determine whether it is satisfied with the account it receives and what sanctions, if any, should follow.

2. *Parliamentary scrutiny/accountability and forcing ministerial resignations:*

The Government agrees with the Committee that the ability of Parliament to put things right when they have gone wrong may be more important than apportioning blame and forcing resignation. Where a failure has occurred it is important for the Government to demonstrate to Parliament that the appropriate action has been taken to put right what went wrong, and to prevent any recurrence. This is why one of the areas for which a Minister takes direct personal responsibility is responding to major failure or expressions of Parliamentary or public concern.

3. *Working definition of 'ministerial responsibility':*⁵¹

The Government notes this suggested working definition based upon making a distinction between giving an account and being held to account. It acknowledges the Committee's definition of how the Executive should be held to account as a fair and accurate statement of the current position. It also agrees with many of the principles which underlie the statement about the Executive giving an account. In particular, it agrees with the Committee that Ministers - and Ministers alone - owe a fundamental duty to account to Parliament. *Questions of Procedure for Ministers* makes clear that Ministers are accountable to Parliament for the policies, decisions and actions of their Departments and Agencies; and that Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. A Minister who did knowingly mislead the House should resign except in quite exceptional circumstances of which a devaluation or time of war or other danger to national security have been quoted as examples.

With respect to the final sentence of the first paragraph of the proposed definition, the Government, of course, accepts that civil servants have a duty to be as helpful and forthcoming as possible to Select Committees and so to give an account to Parliament, in the sense of providing as full evidence as possible on questions of fact and explanation relating to Government policy and actions. The Government is not, however, prepared to breach the longstanding basic principle that civil servants, including the Chief Executives of Next Steps Agencies, give an account to Parliament on behalf of the Ministers whom they serve. Were civil servants to be required to go beyond this, they would inevitably be drawn into matters on which, as the Committee itself acknowledges (paragraph 114), they must refer Select Committees to the Minister. The Government's commitment to a permanent, non-political civil service means there can be no question of apportioning between the Minister and his civil servants part or parallel shares in a single line of accountability to Parliament.

4. *There is no longer a 'Parliamentary convention' on the answering of PQs:*

The Government accepts the Committee's argument that "Parliamentary convention" does not determine which questions Ministers may answer. *Questions of Procedure for Ministers* will be amended accordingly (see Annex B) when the next version is issued.

⁵¹ A footnote relating to the special position of Accounting Officers is not reproduced (see HC 67, p vii)

5. *QPM should be revised to define what may be withheld, but the Code of Practice should not be used restrictively by Ministers*

The Government made clear in its response to Recommendation 19 of the PCA Select Committee's Second Report on Open Government that there has never been any intention that the Government should be any less open with Parliament than with members of the public under the Code of Practice on Access to Government Information and it agreed to amend "Departmental Evidence and Response to Select Committees" to make this point absolutely clear. The exemptions contained in the Code of Practice are discretionary and allow for the possibility that, in judging whether information should be exempted under the Code, a Minister may on occasion (and within the constraints imposed by statutory bars on disclosure) decide that his duty to give information to Parliament should outweigh other considerations. The Government accepts that the criterion against which decisions on withholding information are made should be standardised to conform with the obligation in the *Code of Practice on Access to Government Information* to preserve confidentiality where disclosure would not be in the public interest as defined in Part 11 of the Code. This approach will be incorporated in the next version of *Questions of Procedure for Ministers* (see Annex B) and is reflected in *Guidance on Answering Parliamentary Questions* reproduced at Annex C.

6. *The responsibility of the Prime Minister for Ministerial accountability:*

The Government notes this conclusion but continues to believe that the current wording of *Questions of Procedure for Ministers* provides a balanced statement of the proper relationship between a Prime Minister and his Ministerial colleagues.

7,8,12. *Parliamentary resolution on the accountability of Ministers and officials:*⁵²

The Government attaches the highest importance to the duty of Ministers and civil servants to provide as full and accurate information as possible to Parliament. This point is stressed already in *Questions of Procedure for Ministers* and the *Civil Service Code* which govern the actions of Ministers and their civil servants in discharging their duties, not least their duties in respect to this House and also to the House of Lords.

The Government shares the Committee's view that there could be value in the House's making explicit how it expect Ministers to discharge their responsibilities to Parliament. It believes however that, to have full authority, such a Resolution would need to be adopted with cross-party consensus, and in parallel with the Upper House. For the reasons given below, the Government would not wish to follow in its entirety the wording recommended by the Committee.

The wording recommended in paragraph 60 is unacceptable to the Government because it has the effect of weakening the line of accountability from civil servants to Ministers and from Ministers to Parliament.

When civil servants give evidence to Select Committees they are doing so, not in a personal capacity, but as representatives of their Ministers. This does not mean, of course, that officials may not be called upon to give a full account of government policies, or the justification,

⁵² Roger Freeman reported to the Committee on 22 January with a revised draft which has been discussed at 'cross-party' talks: see Appendix F of this Paper.

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objectives and effects of those policies, but their purpose in doing so is to contribute to the central process of Ministerial accountability, not to offer personal views or judgements on matters that may be of political controversy. To ask civil servants to do so would undermine their professional political impartiality.

With that caveat, the standing instruction to all civil servants (*in Departmental Evidence and Response to Select Committees*) remains that they should be as helpful as possible to Select Committees in providing accurate information. In line with the Committee's Recommendation 5, these instructions are being amended to make more explicit that the *Code of Practice on Access to Government Information* should be the reference point for decisions on providing information to Select Committees, as it is for providing information to Parliament more generally.

9. *Role of the Parliamentary Ombudsman:*

The Government acknowledges the case made by the Committee for amending the Parliamentary Commissioner Act 1967 in order to enable the Ombudsman to consider such complaints made directly to him by MPs. However, as the Ombudsman was created explicitly as a channel for investigating complaints against the Executive by private citizens, the proposal would constitute a major departure from the basic principles of the 1967 Act and could involve a diversion of the Ombudsman's limited resources from his original customers. The Government would therefore welcome the views of the PCA Select Committee before giving a substantive response to this recommendation.

10. *Table Office sessional report on 'withheld' PQs:*

The Government notes this Recommendation which is principally a matter for the House authorities. The Government would have no objection to such a Procedure.

11. *Explanations for information withheld:*

The Government accepts this recommendation and the *Guidance on Answering Parliamentary Questions* at Annex C reflects the fact that, in future, when Ministers refuse to provide information, they will explain the grounds for their decision. The point is considered further in the response to Recommendation 30.

13. *Presumption that Ministers allow named officials to give evidence to committees:*

The Government agrees that, where a Select Committee has indicated that it wishes to hear evidence from named civil servants, Ministers should normally accept such a request, subject to two qualifications fundamental to the role of Select Committees and the constitutional position of Ministers and civil servants in respect of them.

- (i) Civil servants appear before Select Committees on behalf of their Ministers and under their directions because it is the Minister, not the civil servant, who is accountable to Parliament for the evidence given to the Committee. It therefore remains the right of a Minister to suggest an alternative civil servant to that named by the Committee if he feels that the former is better able to represent him; and, while the Committee is under no obligation to accept the Minister's proposal, it is open to the Minister to appear personally before the Committee in the unlikely event

of there being no agreement about which official should most appropriately give evidence.

- (ii) Select Committees have agreed that it is not their task to act as disciplinary tribunals. A Minister will wish to consider carefully a Committee's request to hear evidence from named officials, where this is likely to expose the individuals concerned to questioning about their personal responsibility or the allocation of blame as between them and others. This will be particularly so where the person concerned has been subject to an internal departmental inquiry or disciplinary proceedings. The Minister may, in such circumstances, wish to suggest either that the individual give evidence personally to the Committee, or that a designated senior official do so on his behalf.

Select Committees have on occasion invited retired officials to give evidence on Government matters. The Government accepts, of course, that Select Committees have power to call whom they wish to give evidence. However, retired officials cannot be said to represent the Minister and hence contribute directly to his accountability to the House. It is primarily for this reason, as well as for obvious practical points of having access to up to date information and thinking, that Ministers would expect evidence on Government matters to be given by themselves or by serving officials who report to them.

14. *Clarification of policy on PQ-answering by agency chief executives:*

When a Parliamentary Question is about a matter assigned to an agency under the terms of its Framework Document, the Government's policy is that the Minister will normally ask the Chief Executive to provide the substantive response to the MP. The aim of this policy is to provide a fuller and more directly informed response and to relieve Ministers of the need to involve themselves in the detail of matters for which Chief Executives have day-to-day management responsibility. As the Treasury and Civil Service Committee recognised (Fifth Report 1994) MPs retain the option to seek a Ministerial response if they are dissatisfied with a Chief Executive's reply, thereby preserving Ministerial accountability. However, a Chief Executive may conclude that a particular issue requires discussion with the Minister, or a Ministerial answer; and it is open to Ministers to arrange to be consulted on a more regular or routine basis if they consider it necessary.

25. *1978 Procedure Committee's proposed right of Members to move for Papers:*

The Government welcomes the Committee's conclusion that "Government Departments have, in fact, been generally co-operative with Select Committees in supplying information" (paragraph 129). It believes that undertakings, to which the Committee refers (paragraph 128), to find time for a debate if a failure to provide information to a Select Committee became a matter of general concern to the House are of greater practical value than any formal powers. The Government notes that when the Procedure Committee considered Select Committees' powers to send for persons, papers and records in the course of its review of the working of the Select Committee system in 1990, it did not consider that new or additional powers were necessary or would be workable (Second Report, Session 1989-90, paragraph 162).

26. *'Parliamentary commissions':*

The Government has no objection to Select Committees, or other Parliamentary bodies, investigating the work of government departments in depth, and is ready to assist them in this.

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It would, however, wish to reiterate what it had understood to be common ground, that such in-depth examination should not extend to Select Committees becoming disciplinary tribunals for individual civil servants.

The reasons for this relate to the constitutional relationships between Parliament, Ministers and the Civil Service and were set out in the Government's memorandum to the Committee of 29 March 1996, in particular the final paragraph. That memorandum acknowledged that there was a genuine tension to be resolved between:

the legitimate interest that Select Committees have in satisfying themselves that discipline within the public service is being applied with sufficient rigour to protect the public interest; and

the employer's legal obligation to maintain a relationship of confidence and trust with the employee in individual cases.

The Government proposes to reconcile these two in the following way which it hopes Select Committees will find fair and acceptable.

Departments will continue to be guided by the principle that disciplinary and employment matters are a matter of confidence and trust (extending in law beyond the end of employment). In such circumstances, public disclosure may damage an individual's reputation without that individual having the same "natural justice" right of response which is recognised by other forms of tribunal or inquiry. Any published information should therefore be cast as far as possible in ways which do not reveal individual or identifiable details. Where Committees need such details to discharge their responsibilities, they will be offered in closed session and on an understanding of confidentiality. Evidence on such matters will therefore generally be given on the basis that:

- (a) the Government will not give information about Departmental disciplinary proceedings until the hearings are complete;
- (b) when hearings have been completed, the Government will inform the Committee of their outcome in a form which protects the identity of the individual or individuals concerned except insofar as this is already public knowledge;
- (c) where more detail is needed to enable the Committee to discharge its responsibilities, such detail will be given but on the basis of a clear understanding as to confidentiality;
- (d) the Government will thereafter give an account to the Committee of the measures taken to put right what went wrong and to prevent a repeat of any failures which have arisen from weaknesses in Departmental arrangements.

The Government would, of course, be ready to offer its further views to the Procedure Committee on these and related issues if invited.

27. *Re-examination by Liaison Committee of relationship between PAC, NAO and departmental select committees:*

It is essentially a matter for Parliament to decide upon the form of the relationship between the Public Accounts Committee, the National Audit Office (NAO) and the departmentally related Select Committees. The Government would welcome the Liaison Committee considering the options recommended by the Public Service Committee and would have no objection to moves to allow the departmentally related Select Committees to make more use of the work of the NAO. However, this would be on the understanding that the nature and

scope of the NAO's work (as set out in the National Audit Act 1983), and its relationship with the Government, remain unchanged.

29. *Review by Liaison Committee of operation of select committees, especially as to the adequacy of their resources:*

The Government would, of course, be very ready to offer evidence and views to such an inquiry which, it assumes, would want to take as its starting point the Procedure Committee's 1989-90 Report on "The Workings of the Select Committee System" and the Government's response.

In this context, it is notable that, in its discussion of these matters, the present Committee's report concentrates almost exclusively on the *post hoc* investigative role of Select Committees and addresses hardly at all the part that Committees can play in giving Parliament a more active, forward-looking role in the policy process. For example, the Government's plans to expand its practice of publishing legislation in draft give departmental Select Committees considerable opportunity to comment on and help shape legislation at a formative stage. The Government would welcome expert contributions from Select Committees in this wider consultative process.

Finally, the Government responded to the Committee's proposals for the Government to publish a White Paper on the legislative process (and especially to respond to the 1993 Hansard Society Commission report, *Making the law*), and for the Procedure Committee to undertake an inquiry into the legislative process (nos. 33 & 34):

The Government's views on the legislative process (including several of the issues raised by the Report of the Hansard Society Commission) have been set out in Parliament by the Lord Privy Seal on 14 December 1994, by the present Paymaster-General on 13 December 1995, by the Lord President on 11 July this year, and by the Prime Minister in his speech on constitutional matters to the Centre for Policy Studies on 26 June. The Government will look for further opportunities to stimulate discussion of these issues.

If the Procedure Committee decided to conduct such an inquiry, the Government would of course be ready to contribute its views.

Appendix A

*Crichel Down: Sir David Maxwell Fyfe's speech*⁵³

There has been criticism that the principle operates so as to oblige Ministers to extend total protection to their officials and to endorse their acts, and to cause the position that civil servants cannot be called to account and are effectively responsible to no one. That is a position which I believe is quite wrong, and I think it is the cardinal error that has crept into the appreciation of this situation. It is quite untrue that well-justified public criticism of the actions of civil servants cannot be made on a suitable occasion. The position of the civil servant is that he is wholly and directly responsible to his Minister. It is worth stating again that he holds his office "at pleasure" and can be dismissed at any time by the Minister; and that power is none the less real because it is seldom used. The only exception relates to a small number of senior posts, like permanent secretary, deputy secretary, and principal financial officer, where, since 1920, it has been necessary for the Minister to consult the Prime Minister, as he does on appointment.

I would like to put the different categories where different considerations apply. I am in agreement with the right Hon. Gentleman who has just spoken, that in the case where there is an explicit order by a Minister, the Minister must protect the civil servant who has carried out his order. Equally, where the civil servant acts properly in accordance with the policy laid down by the Minister, the Minister must protect and defend him.

I come to the third category, which is different. Again, as I understand the right Hon. Gentleman, he agrees with me on this. Where an official makes a mistake or causes some delay, but not on an important issue of policy and not where a claim to individual rights is seriously involved, the Minister acknowledges the mistake and he accepts the responsibility, although he is not personally involved. He states that he will take corrective action in the Department. I agree with the right Hon. Gentleman that he would not, in those circumstances, expose the official to public criticism. I think that is important, and I hope that

the right Hon. Gentleman will agree with me that it should come from both sides of the House that we are agreed on this important aspect of public affairs.

But when one comes to the fourth category, where action has been taken by a civil servant of which the Minister disapproves and has no prior knowledge, and the conduct of the official is reprehensible, then there is no obligation on the part of the Minister to endorse what he believes to be wrong, or to defend what are clearly shown to be errors of his officers. The Minister is not bound to defend action of which he did not know, or of which he disapproves. But, of course, he remains constitutionally responsible to Parliament for the fact that something has gone wrong, and he alone can tell Parliament what had occurred and render an account of his stewardship.

The fact that a Minister has to do that does not affect his power to control and discipline his staff. One could sum it up by saying that it is part of a Minister's responsibility to Parliament to take necessary action to ensure efficiency and the proper discharge of the duties of his Department. On that, only the Minister can decide what it is right and just to do, and he alone can hear all sides, including the defence.

It has been suggested in this debate, and has been canvassed in the Press, that there is another aspect which adds to our difficulties, and that is that today the work and the tasks of Government permeate so many spheres of our national life that it is impossible for the Minister to keep track of all these matters.

I believe that that is a matter which can be dealt with by the instructions which the Minister gives in his Department. He can lay down standing instructions to see that his policy is carried out. He can lay down rules by which it is ensured that matters of importance, of difficulty or of political danger are brought to his attention. Thirdly, there is the control of this House, and it is one of the duties of this House to see that that control is always put into effect.

⁵³ HC Deb vol 530 cc1285-7, 20.7.54

There is the other side of that on which I wish to spend a moment. The hon. Member for Edge Hill in the course of a very interesting and reasoned speech, used the phrase, " Heads should have fallen." As I have said, it is a matter for the Minister to decide when civil servants are guilty of shortcomings in their official conduct.

Normally, the Civil Service has no procedure equivalent to a court-martial, or anything of that kind. There have in the past been a few inquiries to establish the facts and the degree of culpability of individuals, but the decision as to the disciplinary action to be taken has been left to the Minister.

Appendix B

Sir Robin Butler on 'accountability' and 'responsibility'

*1. Written Evidence to the Treasury Committee, 1994*⁵⁴

MINISTERIAL ACCOUNTABILITY AND RESPONSIBILITY

3. The Government has not distinguished consistently between the use of the terms "accountable" and "responsible," nor can it determine the use of these words by others. They can and often have been used interchangeably, even in the most authoritative texts. However, they have been used to refer to two different circumstances between which it is useful to distinguish, as explained in paragraphs 9 and 10 below.

4. The Minister in charge of a Department is the only person who may be said to be ultimately accountable for the work of his department. It is usually on the Secretary of State or Minister that Parliament has conferred powers, and Parliament calls on Ministers to be accountable for the policy, actions and resources of their departments and the use of those powers. While Ministers may delegate much of the day to day work of their departments, often now to agencies, they remain ultimately accountable to Parliament for all that is done under their power. Civil servants, except in those particular cases where statute confers powers on them directly, cannot take decisions or actions except in so far as they act on behalf of Ministers. Civil servants are accountable to Ministers, Ministers are accountable to Parliament. Accountability to Parliament involves a two-way relationship—the Minister can continue in office only for so long as the Administration of which he is a part retains the confidence of Parliament and, at elections, of the electorate.

5. "Ministerial responsibility" has often been used to describe much the same concepts. Indeed the classic statement by Sir David Maxwell-Fyfe in the Crichton Down debate in July 1954, and the analysis by Sir Edward Bridges on which that statement drew, used the term "Ministerial responsibility" in this wide constitutional sense of Ministers' duty to respond to Parliament across the whole range of business of their departments, including in exceptional cases any action which may have been taken by a civil servant "of which the Minister disapproves and has no prior knowledge."

6. The Armstrong Memorandum on *The Duties and Responsibilities of Civil Servants* says in paragraph 4, following wording in the Government's response to the Defence Committee's fourth report of 1985-86 (Cmnd 9916):

⁵⁴ Memorandum by Cabinet Office, 5th report of 1993-94, *The role of the civil service*, HC 27-II, pp188-190, ~~et al~~

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- Each Minister is responsible to Parliament for the conduct of his Department, and for the actions carried out by his Department in the pursuit of Government policies or in the discharge of responsibilities laid upon him as a Minister.
- A Minister is accountable to Parliament, in the sense that he has a duty to explain in Parliament the exercise of his powers and duties and to give an account to Parliament of what is done by him in his capacity as a Minister or by his Department.
- Civil servants are responsible to Ministers for their actions and conduct."

7. There have of course been many exchanges between the Government and the Treasury and Civil Service Committee on the nature of accountability since the Committee's extensive evidence-taking on the Armstrong Memorandum, including its report in 1985-86 on *Civil Servants and Ministers: Duties and Responsibilities*, and the Government's response; and in the Committee's first report Session 1986-87 on *Ministers and Civil Servants*, which quoted at length from Sir David Maxwell-Fyfe's speech in the Crichton Down debate of 20 July 1954, and proposed a useful distinction between the "actions" and "conduct" of civil servants, to which the Government responded in February 1987 (Cm 78). The Committee's reports on the Next Steps programme have also commented on the implications of the programme for Ministerial accountability. Neither the Government nor the Committee has advocated that the programme abandons that principle: in the words of the Committee:

"We certainly do not advocate abandoning the principle of Ministerial accountability, but modifying it so that the Chief Executive who has actually taken the decisions can explain them, in the first instance. In the last resort the Minister will bear the responsibility if things go badly wrong, and Parliament will expect him or her to put things right, but the process of Parliamentary accountability should allow issues to be settled at lower levels wherever possible."

8. The Minister's full constitutional accountability to Parliament for all that his Department does, does not, therefore, mean that the Minister is personally involved in every action of his Department. Another and more everyday sense of the term "responsibility" implies direct personal involvement in an action or decision, in a sense which implies personal credit or blame for that action or decision.

9. A distinction between being accountable and being responsible, in the sense of being personally responsible and blameworthy, is one that Sir Robin Butler has made on several occasions to distinguish between the constitutional fact of Ministerial accountability for all that a Department does, and the limits to the direct personal responsibility (in the sense of personal involvement) of Ministers for all the actions of their departments and agencies, given the realities of delegation and dispersed responsibility for much business.

10. The distinction becomes of more than academic importance when it is argued that trends in modern administration have opened an "accountability gap" in which Ministers have distanced themselves from their traditional full accountability for their departments, without a growth in alternative mechanisms by which it could be ensured that some other person is accountable for matters which the Minister has delegated. The Government does not accept such an analysis because it does not accept that delegation diminishes Ministerial accountability to Parliament, or that it creates a new form of direct accountability to Parliament for civil servants. Delegation helps to make clear, however, the limits to Ministers' personal involvement in the actions of their Departments.

11. Ministerial accountability does not mean that only Ministers can give an account of departmental policies, actions and resources to Parliament. The fact that official evidence to

departmental select committees, including evidence from agency chief executives, is commonplace, supports that view. It does mean that if a Select Committee or Member of Parliament is not satisfied with the account given by a civil servant, they can pursue the matter with the Minister.

12. Nor is the fact of Ministerial accountability incompatible with giving civil servants clearly defined responsibilities. The programme of management reforms, notably through the Financial Management Initiative and the Next Steps programme for the creation of agencies, has emphasised delegation and clarity of responsibility as part of improved management structures. The Citizen's Charter principles of identifiable civil servants delivering explicit, published and monitored standards of service, with full information about how services are run, what they cost, the level of performance and who is in charge have taken transparency further forward. In guidance on market testing, the Government has emphasised that the accountability of Ministers to Parliament following a market test remains unchanged irrespective of whether an activity is carried out by civil servants or a by a private contractor—the activity still comes within the scope of public scrutiny. In the Government's view these developments are consistent with and have not undermined the doctrine of Ministers' ultimate accountability to Parliament for all aspects of Departmental performance. Indeed the Government takes the view that the increased transparency arising from these reforms supports that accountability.

2. Oral evidence to the Treasury Committee, 1994⁵⁵

Sir Thomas Arnold

2092. Sir Robin, Mr Forman mentioned Sir Kenneth Stowe and I would like to put some questions to you about accountability and responsibility and begin in a fairly light-hearted, maybe even nostalgic, way by telling you of a remark that Sir Brian Cubbon made to me. Sir Brian has also given evidence to us. He said that when he joined the Home Office just after the War, Ernie Bevin said to him, "You chaps should understand that Ministers are here to tell you what the public won't stand for."¹ What is your reaction to that remark now in the light of contemporary events and experience?

(*Sir Robin Butler*) I think that Ministers and civil servants each have their contribution to make

¹ Note by Sir Thomas Arnold: It was in fact a junior minister in the Labour Government, not Mr Bevin

to the process of government, and Ministers, because they are Members of Parliament, because

they represent their constituencies, because they go back to their constituents, do have a very strong sense of what public opinion is. They have a much stronger sense than the Civil Service has. They also have democratic authenticity, because they have been elected, and they have the right to decide. Civil Servants may have greater expertise, greater experience, which they can bring to Ministers, but anybody is likely to take the view that the way in which things have been done is the best way in which they ought to be done. So I think in my experience that both sides bring these arguments to bear on policy and there is a resolution of the two contributions.

2093. Do you have in front of you the memorandum by the Cabinet Office on ministerial accountability and responsibility?

(*Sir Robin Butler*) Yes, I do.

2094. Could you turn to the notes on pages 4 and 5 and could I draw your attention on page 5 to your item 4. If you run your eye down the page to the third paragraph, the Chancellor of the Duchy of Lancaster is quoted as saying:

⁵⁵ *ibid*, pp 212-4

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"The essence is to clarify the distinction between responsibility for the provision of services, which can and often should-be devolved, and accountability for policy"-which you yourself have just referred to-"which remains firmly with the Minister." Now could I quote you briefly what Sir Brian Cubbon said to us in his memorandum about this. He said: "Ministers are concerned with far more than policy. Ministers deal with a seamless robe of decisions and matters which cannot be dignified with the word 'policy': the details of legislation, individual cases and incidents, appointments, influencing other people's decisions, EU matters, etc." and then later: "This seamless robe now covers an increasingly corpulent frame. The Ministerial workload is determined, not by statute or convention or long-term Government strategies, but by the shifting spotlight of public attention. In the name of accountability, a Minister can be asked about practically anything, and at all times of the day and night. Ministers say, reasonably, that if they are going to be held accountable for virtually everything, they are going to control virtually everything," and he went on to say to me that when Sir Leon Brittan was Home Secretary, Sir Leon had said to him, "If I am going to be accountable, I am going to be in charge." So my question to you, Sir Robin, is this: if the Secretary of State is in charge, is he not therefore responsible and is not the distinction which you sought to draw between accountability and responsibility largely semantic?

(Sir Robin Butler) The Minister is in charge but in a complex department no Minister can be in charge of everything. Just to take as it were an example absurdly, when Sir Leon Brittan was Home Secretary he may have been in charge. He could not have been responsible for the quality of lunch every day in Brixton Prison; he could not have been having reports on what was on the menu that day or on the cleanliness of the kitchens because that is simply not humanly practicable. But somebody ought to be responsible for that and the person who ought to be responsible for it ought to be the Governor and that ought to be made clear. So the distinction I have tried to draw between accountability and responsibility, and that the Chancellor of the Duchy takes up in his speech, is that Sir Leon Brittan, as Sir Brian Cubbon said, is accountable for everything. He can be asked in the House of Commons, he can be asked by the press,

about the quality of food at Brixton Prison and could be required to give an answer, but to say that he can be day-to-day responsible for that is false and it is damagingly false. It is, therefore, important to make clear which official is responsible. The Home Secretary 4 is always accountable but somebody else has to be responsible and responsible to the Home Secretary.

(Sir Robin Butler) No, nor can I claim that it is original. Indeed, I would say that it is in Sir David Maxwell-Fyfe's statement after Crichel Down, where he draws the distinction between what Minister may know of and have to take direct responsibility for and those things which he does not have to take direct responsibility for because his civil servants did them without any knowledge or instruction on his part. Professor Finer in a famous article in 1956 drew a distinction between the two types of responsibility. All I have done, in order to try to make these concepts distinct, is to try to make a practice of attaching the name "accountability" to one and "responsibility" to the other.

2097. Then let us look at the text of your lecture. You quote from it in the notes, item 3. If you run your eye down the page, what you actually say in the lecture, if you go down four paragraphs, is: "That is, of course a different thing." Did you say that?

(Sir Robin Butler) Yes, I did.

2098. You conclude that paragraph by saying, "They cannot, and should not, take the blame for the decisions of which they know nothing, or could be expected to know nothing."

(Sir Robin Butler) Yes.

2099. This is the doctrine you have again enunciated this morning. You then go to say, however, " ... but they should be responsible, if a wrong is brought to their attention, for taking action to provide redress to ensure that mistakes do not recur."

(Sir Robin Butler) Yes.

2100. To what extent do you think that the doctrine of constructive knowledge applies? In other words, if a Minister learns of information on a subject formerly dealt with by Civil Servants, is

he put on inquiry to find out more if something sounds wrong somewhere?

(Sir Robin Butler) Yes. In my view, if a Minister does learn of something where it would have been reasonable for him to make further inquiry; that there was *prima facie* evidence that a reasonable person would say, "It looks as if there is something wrong here," it would not be acceptable for a Minister simply to pass over that in silence.

2101. That being the case, in respect of this argument about responsibility and accountability, turning to your evidence in front of Scott, once Mr Heseltine expressed his hesitation, why did not you and other Civil Servants invite Ministers to read the documents?

(Sir Robin Butler) Again, I do not want to go into matters which are being considered by Scott and, in any case, I was not, myself, personally involved in that episode with Mr Heseltine, so I do not want to answer for other people and I cannot answer for myself.

2102. But you are quite clear in your own mind that the argument about responsibility and accountability really does go to the heart of the Scott Inquiry?

(Sir Robin Butler) It is clearly a very important part of it because what Lord Justice Scott is having to decide is where he considers that something has gone wrong, whom he should criticise; who, therefore, is blameworthy and responsible. Now, the point I was seeking to make to Lord Justice Scott is that because a Minister is accountable for everything that goes on in his Department, it is not fair to blame the Minister for everything that goes wrong in his Department if he neither knew of-nor had any reason to know-that this thing was going on.

Mr Forman

2103. Leaving aside the Scott Inquiry, Sir Robin, (I understand your reasons for not wanting to dig that up again at this stage) referring back to the Cabinet Office memorandum which has been submitted to the Committee today, in paragraph 10 of that memorandum-and you probably have it in front of you-an important point is made that many people believe that among the trends in modern administration is an accountability gap, which has allegedly grown up without a growth of alternative

mechanisms really to fill that gap. You correctly point out that the Government does not accept that analysis, but the impression is that there are others who do accept that analysis, or give it some credence. Would you care to share your views on the problem of the accountability gap and how it might be addressed?

(Sir Robin Butler) I think there is a misunderstanding, particularly about Next Steps Agencies. People often refer to them as quasi-autonomous. They are not. They are part of the Civil Service. The Chief Executive of a Next Steps Agency is a Civil Servant like anybody else, responsible to the Minister, and the Ministers accountable for him. That is not often widely understood and that is part of the reason, part of the misunderstanding, why people have talked about an accountability gap. I say there is no accountability gap because a Minister is accountable, in the sense that he can be called to account for everything that goes on in his Department; every exercise of the powers that Parliament has given to him.

Chairman

2104. It might be a responsibility gap.

(Sir Robin Butler) There might be a responsibility gap, but that is what we have sought to close in the Next Steps arrangement by defining the responsibility of Chief Executives and Civil Servants down the line. So my whole argument about Next Steps is that it is an improvement in accountability because we have both retained the fact that Parliament can always ask a Minister about anything under his control, but can recognise that some powers have, in a complex society, to be delegated.

Mr Forman

2105. I have great sympathy for what you say Sir Robin, because I happen to have been Minister myself, but I still think that in the eyes of the general public accountability really means willingness and, indeed, demonstrated evidence, to resign when somebody is held to account because things have gone massively wrong-or it appear that things have gone massively wrong. Would you not say that is really the critical definition and one of the difficulties here in the whole area of accountability is that resignations are far and few between?

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(Sir Robin Butler) That is a obviously a matter for the conscience of the Minister concerned. There have been occasions when Ministers have resigned when something has gone wrong in their Departments, even though the world recognises that they could not properly be held responsible for them. There have been many occasions when they have not. I think the point I would make about this is-and this distinction was recognised at the time of Crichton Down - that contrary to what is supposed, the practice has not actually changed a great deal over a hundred or more years. I referred briefly to the article by Professor Finer where he surveyed ministerial resignations over the previous hundred years, and where he established that the number of occasions on which Ministers had resigned because something had gone wrong in their Departments was very much fewer than the number of occasions when such things had gone wrong.

2106. That was the article published in 1958.
(Sir Robin Butler) 1956

2107. That is a long time ago now. Some people in the audience were not born then. Coming right up-to-date, I am sure one would hear criticism from the man on the Carshalton omnibus (if it is still running) that there are not enough resignations in modern circumstances, although politicians-for the reasons Sir Thomas mentioned-feel it necessary to take on themselves a degree of control and responsibility for virtually everything that happens, largely because the media impute that responsibility to them.

(Sir Robin Butler) Yes. I think there are two things about this. There is (if I may put it this way) a rather foolish game of pursuing resignations. There is a kind of scalp-hunting. I think that is counter-productive. It debases the currency. If people are called to resign the whole time they are less inclined to do so.

3. *Oral evidence to the Scott Inquiry 1994*⁵⁶

But I would also say that during the time I have been in government I think the number of occasions on which Ministers have resigned is no less than it was in the early years of this century; indeed, a great deal more frequently.

2108. Could you give us just one example of what I would call an exemplary resignation, in your time? That is to say, a resignation which fulfils the highest traditional standards that one would expect in public life.

(Sir Robin Butler) I do not think they are traditional-in the sense that standards have varied over the years-but I believe the prime example of a Minister who resigned (even though it was generally regarded that he was not personally culpable) was Lord Carrington over the Falklands and, of course, his colleagues.

Chairman

2109. Of course, we do know that the Prime Minister has set it on record when he says that Ministers should give accurate and truthful information to the House and if they knowingly fail to do this they should relinquish their posts, except in quite exceptional circumstances. We do know that is a case for resignation, do we not?

(Sir Robin Butler) I think that has always been accepted.

⁵⁶ Transcript, Day 62, 9.2.94 pp 14-48, not reproduced here

Appendix C

Revised Paragraph 1 of QPM⁵⁷

Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties. In particular they must observe the following principles of Ministerial conduct:

- (i) Ministers must uphold the principle of collective responsibility;
- (ii) Ministers are accountable to Parliament for the policies, decisions and actions of their departments and agencies;
- (iii) Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the *Government's Code of Practice on Access to Government Information*;
- (iv) Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;
- (v) Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation;
- (vi) Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;
- (vii) Ministers must not use public resources for party political purposes. They must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code.

These notes detail the arrangements for the conduct of affairs by Ministers. They are intended to give guidance by listing the principles and the precedents which may apply. They apply to all Members of the Government (the position of Parliamentary Private Secretaries is described separately in Section 3). The notes should be read against the background of the general obligations listed above, and in the context of protecting the integrity of public life. It will be for individual Ministers to judge how best to act in order to uphold the highest standards. They are responsible for justifying their conduct to Parliament. And they can only remain in office for so long as they retain the Prime Minister's confidence.

⁵⁷ annex B of the Government response to the Public Service Committee, HC67, 1996-97 November 1996

Appendix D

*Guidance to officials on drafting answers to Parliamentary questions*⁵⁸

1. Never forget Ministers' obligations to Parliament which are set out in '*Questions of Procedure for Ministers*':

"Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the *Government's Code of Practice on Access to Government Information*."

"Ministers have a duty ... to give Parliament and the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or mislead Parliament and the public. "

2. It is a civil servant's responsibility to Ministers to help them fulfil those obligations. It is the Minister's right and responsibility to decide how to do so. Ministers want to explain and present Government policy and actions in a positive light. They will rightly expect a draft answer that does full justice to the Government's position.
3. Approach every question predisposed to give relevant information fully, as concisely as possible and in accordance with guidance on disproportionate cost. If there appears to be a conflict between the requirement to be as open as possible and the requirement to protect information whose disclosure would not be in the public interest, you should check to see whether it should be omitted in accordance with statute (which takes precedence) or the *Code of Practice on Access to Government Information*, about which you should consult your departmental openness liaison officer if necessary.
4. Do not omit information sought merely because disclosure could lead to political embarrassment or administrative inconvenience.
5. Where there is a particularly fine balance between openness and non-disclosure, and when the draft answer takes the latter course, this should be explicitly drawn to the Minister's attention. Similarly, if it is proposed to reveal information of a sort which is not normally disclosed, this should be explicitly drawn to Ministers' attention.
6. If you conclude that material information must be withheld and the PQ cannot be fully answered as a result, draft an answer which makes this clear and which explains the reasons in equivalent terms to those in the Code of Practice, or because of disproportionate cost or the information not being available. Take care to avoid draft answers which are literally true but likely to give rise to misleading inferences.

⁵⁸ annex C of the Government response to the Public Service Committee, HC 67, 1996-97, November 1996

Appendix E

*OPS Memorandum on Ministerial accountability to Public Service Committee, 1996*⁵⁹

MINISTERIAL ACCOUNTABILITY

2. A comprehensive statement of Ministerial accountability was drawn up by Sir Edward Bridges (then Permanent Secretary to the Treasury) in 1954, at the time of Crichel Down. As it summarises what may be called the classical doctrine, it is worth quoting the central principle.

"Under our constitutional practice, executive powers are conferred by Parliament on Ministers of the Crown. Both in regard to these powers and to others which derive from the prerogative and not from statute, it has long been the established constitutional practice that the appropriate Minister of the Crown is responsible (CA) to Parliament for every action in pursuance of them.

All this, of course, is fundamental to our whole system of democratic government. It is upon Ministers, and not upon Civil Servants that the powers of Government have been conferred: and it is Ministers who are Members of one or other House of Parliament, whose dismissal from office Parliament can bring about if it so chooses—who are answerable (CA) to Parliament for the exercise of those powers. Save in special cases, not relevant in this context, Civil Servants have no powers of their own. They can take no decisions or do anything, except insofar as they act on behalf of Ministers, and subject to the directions and control of Ministers.

It may be noted that no other system would be workable so long as Ministers are served by permanent officials who serve all governments alike and are debarred from overt party affiliation, and from party controversy: and that any change in the system would have far-reaching effects on basic features of our constitution. '

It follows that a civil servant, having no power conferred on him by Parliament, has no direct responsibility (CA) to Parliament and cannot be called to account by Parliament. His acts, indeed, are not his own. All that he does is done on behalf of the Minister, with the Minister's authority express or implied: the Civil Servant's responsibility (CA) is solely to the Minister for what he may do as the Minister's servant.

". . . The fact that Ministers alone exercise the ultimate powers of executive government and that they can be and are called to account (CA) both for their own acts (PR) and for those done on their behalf (CA) is our best safeguard against the abuse of those powers."

3. Drawing upon this principle, Sir David Maxwell-Fyfe (then Home Secretary) distinguished in the Crichel Down debate between four categories of action in order to demonstrate the working of the principle of Ministerial accountability. His fourth category is germane.

⁵⁹ *Ministerial accountability and responsibility*, 2nd report of the Public Service Committee, HC 313-III, 1995-96, extracts, pp 188-90. In this memorandum, 'CA' means 'constitutionally accountable' and 'PR' means 'personally responsible', as identified by OPS (see fn 1 to this memorandum, p188).

"where action has been taken by a civil servant of which the Minister disapproves and has no prior knowledge, and the conduct of the official is reprehensible, then there is no obligation on the part of the Minister to endorse what he believes to be wrong, or to defend what are clearly shown to be errors of his officers. The Minister is not bound to defend action of which he did not know, or of which he disapproves. (*ie., he is not PR*). But of course, he remains constitutionally responsible (CA) to Parliament for the fact that something has gone wrong, and he alone can tell Parliament what has occurred and render an account of his stewardship.(CA)""

4. These 1954 statements are fully consistent with the distinction drawn forty years later in the April 1994 Cabinet Office Memorandum to the Treasury and Civil Service Committee between:

" . . . *the constitutional fact of Ministerial accountability* for all that a Department does, and the limits to the *direct personal responsibility* (in the sense of personal involvement) of Ministers for all the actions of their departments and agencies, given the realities of delegation and dispersed responsibility for much business."

5. Hence the distinction, far from being novel, has long been part of the classical doctrine of Ministerial accountability, the most recent Government statement of which was given in "The Civil Service: Taking Forward Continuity and Change":

"In the Government's view, a Minister is "*accountable*" to Parliament for everything which goes on within his department, in the sense that Parliament can call the Minister to account for it. *The Minister is responsible* for the policies of the department, for the framework through which those policies are delivered, for the resources allocated, for such implementation decision as the Framework Document may require to be referred or agreed with him, and for his response to major failures or expressions of Parliamentary or public concern. But *a Minister cannot sensibly be held responsible* for everything which goes on his department in the sense of having a personal knowledge and control of every action taken and being personally blameworthy when delegated tasks are carried out incompetently, or when mistakes or errors of judgment are made at operational level. It is not possible for Ministers to handle everything personally, and if Ministers were to be held personally responsible for every action of the department, delegation and efficiency would be much inhibited."

"The *line of accountability* of officials runs through Ministers to Parliament. If Parliament is not satisfied with the account given, the ultimate sanctions are the motion of no-confidence or the withholding of supply.

6. The doctrine evolved during the latter part [*sic*] of the 19th Century in parallel with the development of the constitutional distinction between Ministers of the Government and a politically impartial Civil Service. The fact that civil servants are accountable to Ministers, who in their turn are accountable to Parliament, determines how politically sensitive business flows in a department: up to and down from the Minister. So long as Ministers are deemed to be accountable for officials' actions, they retain the ultimate authority over all that happens in their department. Were civil servants able to account directly to Parliament and to express their own views on policy advice preferred to Ministers that would give unelected officials more power than is warranted in a Parliamentary democracy, and lead inexorably to the end of the permanent, non-political civil service.

7. The doctrine therefore defines the constitutional position of the Civil Service. Civil servants' authority is clearly derived from Ministers, and powers are clearly exercised on their behalf and subject to their ultimate control. Certainly, if it were Parliament's intention that civil servants should exercise powers in their own right, it would seem more appropriate for Parliament to vest those powers in civil servants directly.

8. As Sir Edward Bridges noted in 1954, any change in this clear line of accountability would entail radical constitutional reform and this no doubt explains the durability of the doctrine.

THE SCOTT REPORT

9. Sir Richard Scott said that he found it "difficult to disagree" with the "distinction between Ministerial "accountability" and Ministerial "responsibility". He said:

"Ministerial 'accountability' is a constitutional burden that rests on the shoulders of Ministers and cannot be set aside. It does not necessarily, however, require blame to be accepted by a Minister in whose department some blameworthy error or failure has occurred. A Minister should not be held to blame or required to accept personal criticism unless he has some personal responsibility for or some personal involvement in what has occurred. The kernel of Sir Robin's point, I think, is that the conduct of government has become so complex and the need for Ministerial delegation of responsibilities to and reliance on the advice of officials has become so inevitable as to render unreal the attaching of blame to a Minister simply because something has gone wrong in the department of which he is in charge. For my part, I find it difficult to disagree.

"Sir Robin's distinction between 'accountability' and 'responsibility' has important constitutional implications and does not have approval from all quarters. His point, however, that a Minister cannot reasonably be held to blame for things done or omitted within his department of which he knew nothing at the time and could not have been expected to have foreseen or prevented, seems to me to have an important bearing on the obligation of Ministers to provide information to Parliament. If Ministers are to be excused blame and personal criticism on the basis of the absence of personal knowledge or involvement, the corollary ought to be an acceptance of the obligation to be forthcoming with information about the incident in question. Otherwise Parliament (and the public) will not be in a position to judge whether the absence of personal knowledge and involvement is fairly claimed or to judge on whom responsibility for what has occurred ought to be placed. Any re-examination of the practices and conventions relied on by government in declining to answer, or to answer fully, certain Parliamentary Questions should, in my opinion, take account of the implications of the distinction drawn by Sir Robin between Ministerial "accountability" and Ministerial "responsibility" and of the consequent enhancement of the need for Ministers to provide, or to co-operate in the provision of, full and accurate information to Parliament.

CONVENTIONS GOVERNING THE PROVISION OF INFORMATION BY GOVERNMENT TO PARLIAMENT

10. The Government last year expanded the first paragraph of "*Questions of Procedure for Ministers*" into a seven point code of Ministerial conduct. The second and third points

constitute the current summary formulation by the Government of the principal obligations which Ministers, as members of the executive, owe to Parliament.

- "(ii) Ministers are accountable to Parliament for the policies, decisions and actions of their departments and agencies;
- (iii) Ministers must not knowingly mislead Parliament and the public and should correct any inadvertent errors at the earliest opportunity. They must be as open as possible with Parliament and the public, withholding information only when disclosure would not be in the public interest, should be decided in accordance with established Parliamentary convention, the law, and any relevant government Code of Practice".

Appendix F

Latest Government draft of a proposed Parliamentary Resolution on ministerial accountability:⁶⁰

"That, in the opinion of this House, the following principles should govern the conduct of Ministers of the Crown in relation to this House:

- (1) Ministers have a duty to the House and its Committees to account, and be held to account, for the policies, decisions and actions of their departments and Next Steps Agencies.
- (2) It is of paramount importance that Ministers give accurate and truthful information to this House and its Committees. Any inadvertent error should be corrected at the earliest opportunity. If Ministers knowingly mislead the House, the House will expect them to offer their resignation to the Prime Minister.
- (3) Ministers should be as open as possible with this House and its Committees, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the Government's *Code of Practice on Access to Government Information*.
- (4) Similarly, ministers should require civil servants who give evidence before Select Committees on their behalf and under their directions to be as helpful as possible in providing full and accurate information in accordance with the duties and responsibilities of civil servants as set out in the *Civil Service Code*."

⁶⁰ Prepared as a basis for cross-party discussions, 21.1.97

Recent Research Papers include:

97/10	Referendum: Recent Proposals	24.01.95
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