



The Hutton Inquiry: publication and Commons consideration; and comparisons with other inquiries

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This note reviews the publication arrangements of the report of the Hutton Inquiry, and how the report was considered in the House of Commons. By way of comparison, it reviews the responses to a selection of inquiries in the House of Commons. It provides some detail on the Scott report, including calls for a debate on a substantive motion, rather than on a motion for the adjournment. For the other inquiries, it details how the inquiry report was presented to the House of Commons.

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A. The Hutton Inquiry

1. Publication and presentation in the House of Commons

The *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly CMG* by Lord Hutton was published on 28 January 2004.¹

The details of the way in which the report was to be published were announced by the Department for Constitutional Affairs in a press notice:

Lord Hutton will deliver a statement in Court 76 at the Royal Courts of Justice on Wednesday 28 January 2004, the date on which his report will be published.

The statement will be delivered at 12.30pm after the report has been laid before Parliament but before its publication. This timing was arranged after discussions between Lord Hutton, the DCA and House authorities. The statement will be a substantial summary of Lord Hutton's findings. It will be available for live transmission through a pool facility.

Publication of the Report will take place at 1.30pm. The Report will be immediately available [...]

Lord Hutton's statement will be followed by a statement by the Prime Minister in the House of Commons and by the Secretary of State for Constitutional Affairs and Lord Chancellor, Lord Falconer, in the House of Lords.²

The report, like the Scott Report, was in the form of a return to the House (see below).

Copies of the report were made available before it was published. Lord Hutton announced that the six parties to the Inquiry (the Government, the BBC, Dr Kelly's Family, the authorities in Parliament, Andrew Gilligan and Susan Watts) would have '24 hours notice of the report'.³ He subsequently made clear that this was 'subject to undertakings to ensure that there is no leaking of parts of the report before it is published'.⁴

On 16 January, the Prime Minister's Official Spokesman announced that the leaders of the two main opposition parties would have access to the Hutton Report at 6.00am on the day it was to be published:

The Prime Minister's Official Spokesman told journalists that the leaders of the Opposition were being informed that they would be able to get access to the Hutton

¹ HC 247 2003-04

² Department for Constitutional Affairs, *The Hutton Report – Wednesday 28 January 2004*, 26 January 2004

³ The Hutton Inquiry, HI-14, *Lord Hutton's Report – Publication Date 28 January 2004*, 15 January 2004

⁴ The Hutton Inquiry, HI-15, *Lord Hutton's Report – Confidentiality Arrangements*, 26 January 2004

report from 6am on Wednesday 28th January, about double the time that opposition parties were given on the release of the Scott Report, even though in that instance the Government had had the report for eight days as opposed to 24 hours as in this case.⁵

Lord Hutton's statement was broadcast live, and made available on the internet.⁶

The Prime Minister, Tony Blair, made a statement in the House of Commons, at 2.00pm on the day the report was published, 28 January 2004.⁷

2. Form of the debate on the report

On 4 February 2004, the report was debated in the House of Commons (and in the House of Lords). The debate was opened by the Prime Minister and Michael Howard, the leader of the Opposition responded for the Conservatives. The debate was held on a motion for the adjournment, and therefore no vote took place.⁸

During the course of Tony Blair's speech, there was a disturbance in the Public Gallery and the House of Commons was suspended for 12 minutes whilst the gallery was cleared.⁹ *The Guardian* reported the disturbance in the following terms:

MPs debated the Hutton report with the public excluded yesterday after anti-war protesters shouted abuse at the prime minister.

The Speaker, Michael Martin, suspended debate for 15 minutes and ordered that the public gallery be closed, for the first time in 17 years, after seven protesters from Oxford screamed "No more illegal wars", "Whitewash", "War criminal" and "We want an independent inquiry, Tony."¹⁰

3. The Leaking of the Report

On 28 January 2004, leaked conclusions of Lord Hutton's report appeared in *The Sun*, under the headline 'Hutton Report Leaked'.¹¹ The following day, Lord Hutton announced 'an urgent investigation into the handling of those copies of the report released to the parties to the Inquiry in advance of publication'.¹²

On 11 August 2004, the result of the leak inquiry was announced. The BBC reported that:

⁵ 10 Downing Street: Press Briefing, 16 January 2004, see:

<http://www.number10.gov.uk/output/Page5194.asp>

⁶ <http://www.the-hutton-inquiry.org.uk/content/rulings/statement280104.htm>

⁷ HC Deb 28 January 2004 cc337-358

⁸ HC Deb 4 February 2004 cc767-872

⁹ *ibid*, c771

¹⁰ Sarah Hall, "Protesters ejected as party leaders clash: Commons gallery closed to public during debate", *The Guardian*, 5 February 2004

¹¹ "Hutton Report Leaked", *The Sun*, 28 January 2004, p1 and pp4-5

¹² The Hutton Inquiry, HI-16, *Leak Investigation*, 29 January 2004

The investigation into who leaked parts of January's Hutton Report into the death of weapons expert Dr David Kelly has failed to find the culprit.

Lord Hutton said he "deplored" the Sun printing many of the key points hours ahead of its full publication.

A spokesman said "a full and careful investigation" had been carried out but was "unable to discover the source".

[...]

The Hutton Inquiry statement said: "Lord Hutton asked the solicitor to the inquiry to conduct an investigation to try to discover the source of the leak.

"The solicitor carried out a full and careful investigation but was unable to discover the source," it added.

The inquiry into the report's leak was also asked to look into whether there were any other steps which could be taken in the future to ensure that confidential reports did not leak before publication.

However the probe concluded there were "no particular weaknesses" in the measures which were taken to guard the confidentiality of the report, although "steps taken to protect sensitive reports before publication will be kept under regular review".¹³

B. The Scott Report

1. Publication and presentation in the House of Commons

The Scott Report into the arms-to-Iraq affair was published on 15 February 1996, and a statement was made by Ian Lang, then Secretary of State for Trade and Industry.¹⁴ The report was made available in the Vote Office on the afternoon of the statement on the report (see below). The report had been made available to Robin Cook, Shadow Foreign Secretary, and Menzies Campbell, Liberal Democrat Spokesperson on Foreign Affairs and Defence, at midday and they were allowed to read it at government offices, to enable them to respond to the statement.¹⁵

The report was in the form of a return to the House.¹⁶ This was used to ensure that the report attracted the protection of the *Parliamentary Papers Act 1840* and to allay concerns about possible legal action following the findings. Erskine May notes:

This procedure is occasionally used by Ministers in order to attract to reports the protection of statute afforded by an order of the House for printing or other publication.¹⁷

¹³ BBC News, *Hutton fails to find leak culprit*, 11 August 2004, http://news.bbc.co.uk/1/hi/uk_politics/3554902.stm

¹⁴ HC Deb 15 February 1996 c1139-63

¹⁵ HC Deb 15 February 1996 c1134. The precedent cited was a similar arrangement offered to the shadow Home Secretary in relation to access to the Learmont report on prison escapes in 1995

¹⁶ HC 115-6 Session 1995-6

¹⁷ Erskine May, *Parliamentary Practice* 22nd edition 1997, p225

The precise arrangements for the release of the report to Members were given in response to a Parliamentary Question:

In view of the exceptional size of, and interest in, Sir Richard Scott's report, the arrangements for the distribution of copies to hon. Members have been agreed by the Government, the Speaker and the House authorities. The following arrangements will apply: (a) copies will be available from the Reasons Room at the back of the Chair as well as from the Vote Office; (b) under the Speaker's authority, the sitting will be suspended at 3.30 pm for 10 minutes for facilitate the distribution of copies to hon. Members.¹⁸

A parliamentary answer indicated that the following ministers received a copy of the report before publication on 15 February:

1. Prime Minister
2. Foreign Secretary
3. President of Board of Trade
4. Secretary of State for Defence
5. Attorney General¹⁹

The following also 'had access' to the report before publication, in accordance with the terms laid down by the Scott inquiry:

1. Deputy Prime Minister
2. Chancellor of the Exchequer
3. Chancellor of the Duchy of Lancaster
4. Minister of State, DTI
5. Paymaster General
6. Parliamentary Secretary, Office of Public Service²⁰

A small number of civil servants also had access to the report.²¹ The report was made available to these recipients eight days before the publication date.²² Previously, extracts of the draft report had been sent to individuals criticised, for comment, over a period of months before publication.²³

The Government was subsequently subject to criticism for preparing summaries of the report for distribution on the day of publication.²⁴ The Government launched a press pack on the day of publication, consisting of 73 pages of summary of the report's findings. Adam Tomkins, an authority on Scott, noted in *The Constitution After Scott*, that:

¹⁸ HC Deb 14 February 2003 c623

¹⁹ HL Deb 27 February 1996 c95WA

²⁰ HL Deb 27 February 1996 c95WA

²¹ HL Deb 27 February 1996 c96WA

²² HL Deb 13 February 1996 c503

²³ HC 115 1995-6, para B2.25

²⁴ 'Ministers accused of discrediting arms-to Iraq report', *The Times*, 8 February 1996

The impact of the press pack was enormous. It effectively killed the political effect which the Scott report should have by deliberately pointing the media to passages of the report which were less hostile to the government.²⁵

The report was launched at a press conference hosted by the inquiry team one hour after the statement in the House. The secretary to the inquiry complained afterwards that some of Sir Richard Scott's comments at that press conference had been misrepresented. The text of the letter was released to the press.²⁶ Tomkins commented that the failure of the inquiry team to prepare a summary of the report, which was 1,806 pages long, meant that the media did not have sufficient signposting of the conclusions.²⁷

2. Form of the debate on the report

The debate on the report was held on 26 February 1996, and was opened by Ian Lang, on a motion for the adjournment of the House. Robin Cook responded for the Opposition. The motion to adjourn was won by 320 votes to 319.²⁸

According to a report in *The Times* on 22 February 1996, Robin Cook called for a substantive vote on the Scott report:

Mr Cook, at the second joint news conference with the Liberal Democrats in the past six days, accused the Government of trying to "cheat Parliament" of a proper vote on whether the ministers criticised in the Scott report should resign. He said the vote would be based on a meaningless procedural motion that was a device to "save ministers the embarrassment of drawing up a real motion which would oblige them to come clean on whether they accept the Scott conclusions".²⁹

In the same article, Tony Blair was reported as promising to sack ministers who misled Parliament:

Tony Blair pledged yesterday that he would dismiss any Labour ministers found guilty of breaching their duties to Parliament.

The Labour leader kept up the pressure over the Scott report by declaring that, if he came to power, he would not stand for ministers withholding information from MPs as had happened in the arms-to-Iraq affair. Ministers who broke the rules should not go unpunished.

Mr Blair, appealing to Tory MPs before next week's crucial vote in the Commons, said that the issue was one of parliamentary accountability. He told the Today programme on BBC Radio 4: "I would not hesitate for a minute if I was in

²⁵ Adam Tomkins, *The Constitution after Scott: Government Unwrapped*, 1998, p11

²⁶ 'Scott letters', *The Guardian*, 23 February 1996

²⁷ Adam Tomkins, *The Constitution after Scott: Government Unwrapped*, 1998, p12

²⁸ HC Deb c589-690

²⁹ Philip Webster, "Blair would not hesitate to sack errant ministers", *The Times*, 22 February 1996

government, and an independent report that I had commissioned found my ministers in breach of the rules of parliamentary accountability and found them personally at fault, to say these ministers could not form part of my government." ³⁰

C. Franks Report³¹

On 6 July 1982, the then Prime Minister, Margaret Thatcher, announced that:

... following consultation with the Leader of the Opposition and leaders of other Opposition parties, the Government had decided to appoint a committee of Privy Counsellors, under the chairmanship of Lord Franks, with the following terms of reference:

“To review the way in which the responsibilities of Government in relation to the Falkland Islands and their Dependencies were discharged in the period leading up to the Argentine invasion of the Falkland Islands on 2 April 1982, taking account of all such factors in previous years as relevant; and to report”.³²

The report was presented to Parliament in January 1983, and was the subject of a two-day debate, on a motion:

That this House takes note of the Report of a Committee of Privy Counsellors on the Falklands Islands Review (Cmnd 8787)³³

Mrs Thatcher both opened the debate and wound it up.³⁴

The Opposition's amendment, which was defeated by 292 votes to 240,³⁵ said:

[That this House] notes that the Report of the Falkland Islands Review confirmed the failure of Her Majesty's Government to give adequate priority to the Falkland Islands in its defence and foreign policy, its failure to consider the problem in Cabinet or the Defence Committee of Cabinet in the fifteen months before the invasion took place, and its failure to respond adequately to a risk which it knew to exist.³⁶

D. Other inquiries

A number of inquiries have been established under the terms of the *Tribunals of Inquiry (Evidence) Act 1921*. The results of some inquiries have been reported to the House only by

³⁰ *Ibid*

³¹ *Falkland Islands Review*, Report of a Committee of Privy Councillors, 1983, Cmnd 8787

³² *Ibid*, p1

³³ HC Deb 25 January 1983 c789

³⁴ *Ibid* and HC Deb 26 January 1983 c989

³⁵ HC Deb 26 January 1983 c990

³⁶ HC Deb 25 January 1996 c802

means of statements, while in other cases statements have been followed by debates. The list of examples below is not exhaustive but gives a flavour of the way in which they were reported to the House.

1. Bribery of Ministers of the Crown or other public servants in connection with the grant of licences, etc

On 3 February 1949, Winston Churchill asked a private notice question on whether ‘the Attorney-General had come to any decision on the question of criminal proceedings arising from the report of the Tribunal presided over by Mr Justice Lysney’.³⁷ Later in the same afternoon, Mr Belcher, formerly a Minister at the Board of Trade, who had been a subject of the inquiry announced his resignation from the House in a personal statement.³⁸

After Mr Belcher withdrew, the Prime Minister, Clement Attlee, opened a debate on the inquiry report. He moved:

That the Report of the Tribunal appointed under the Tribunal of Inquiry (Evidence) Act, 1921, to inquire into allegations reflecting on the official conduct of Ministers of the Crown and other Public Servants presented on 21st January, be accepted.³⁹

In his response to Mr Attlee’s speech, Mr Churchill said:

The course and procedure which the Government adopted when these matters were brought to their notice were not prompted by an party interest. Indeed, it might be thought that the procedure which they adopted was the least suited to their interests, and also most severe upon the persons concerned. Nevertheless it is our considered view that the right course was to invoke the 1921 Act and have these matters examined by the statutory Tribunal.

We accept the recommendations and Report of the statutory Tribunal. The tribunal, in its good faith, impartially, competence and independence cannot be impugned or challenged. There is no need for the House, in my view, to add to what they have said, and no need for them to subtract from it. The conduct of the Attorney-General, although a Minister of the Government involved, has been correct and unbiased. There is, therefore, no difference between the Government and the Opposition upon the steps which were taken by the Prime Minister and his colleagues in dealing with the lamentable matters with which they were confronted. Still less is there any suggestion that the Labour government have not done their best to sustain those standards of decent behaviour and to condemn and punish any departure from those standards of which we have always been proud in this island. I have some other remarks to make but these are definitely subordinated to the major premises which I have submitted to the House.⁴⁰

³⁷ HC Deb 3 February 1949 vol 460 c1836

³⁸ *Ibid* cc1844-1849

³⁹ *Ibid* c1849

⁴⁰ *Ibid* cc1856-1857

The motion was agreed to.⁴¹

2. The circumstances in which offences under the Official Secrets Act were committed by William Vassall

On 25 April 1963, the Prime Minister, Harold Macmillan, made a statement on the report of into William Vassall. During the course of the statement, Mr Wilson, the leader of the Opposition, requested that the debate that the Leader of the House had already promised should ‘enable the whole House to deal with the questions that have been raised this afternoon, particularly the question of tribunal procedure’.⁴² In response Mr Macmillan suggested that Mr Wilson should discuss the motion with the Leader of the House ‘to see about the precise wording of the Motion in order to ensure that it is satisfactory to the House as a whole and is as wide as possible’.⁴³

On 7 May 1963, Harold MacMillan, opened the debate on the Vassall Case (Tribunal Report). He moved:

That this House takes note of the Report of the Tribunal appointed under the Tribunals of Inquiry (Evidence) Act 1921, to inquire into the Vassall Case and Related Matters presented on 24th April, and of the operation of the Act.⁴⁴

This motion too was agreed to.⁴⁵

3. The disaster at Aberfan

The Secretary of State for Wales, Cledwyn Hughes, opened a debate on the report of the tribunal on Aberfan. He moved:

That this House takes note of the Report of the Tribunal appointed under the Tribunals of Inquiry (Evidence) Act 1921, to inquire into the disaster at Aberfan (House of Commons Paper No 553).⁴⁶

This motion too was agreed to.⁴⁷

⁴¹ *Ibid* c1962

⁴² HC Deb 25 April 1963 vol 676 c424

⁴³ *Ibid* c425

⁴⁴ HC Deb 7 May 1963 vol 677 c240

⁴⁵ *Ibid* c372

⁴⁶ HC Deb 26 October 1967 vol 751 c1909

⁴⁷ *Ibid* c2014

4. The circumstances leading to the cessation of trading by the Vehicle and General Insurance Co. Ltd

On 16 February 1972, the Prime Minister, Edward Heath, made a statement. In response to the Prime Minister's statement, Harold Wilson, leader of the Opposition began by saying:

I should like to thank the right hon. Gentleman for his statement and going into great detail in a summary of the report and of details of departmental action taken on staff and security measures. I think the fact that he himself has intervened in this matter shows the great degree of importance which he attaches to it. It is unusual, if not unprecedented, for a Prime Minister to report to the House on a tribunal. We welcome the close attention he is paying to this matter.⁴⁸

5. The events on Sunday 30th January 1972 which led to loss of life in connection with the procession in Londonderry that day

The Prime Minister, Edward Heath, made a statement on 19 April 1972, on the Widgery Inquiry.⁴⁹

6. The extent to which the Crown Agents lapsed from accepted standards of commercial or professional conduct or of public administration as financiers on their own account in the years 1967-74

Mrs Thatcher used a written answer to make a statement on the report of the Tribunal on Crown Agents.⁵⁰

In *Public Law*, Barry Winetrobe traces the genesis of the tribunal of inquiry. He notes that the tribunal came after an earlier committee of inquiry:

Parliamentary disquiet following the statement of the minister, Judith Hart, on the Fay report on December 1, 1977 was such that the Speaker granted a request for an emergency debate, which took place four days later. Mrs Hart defended her proposal for a further *ad hoc* inquiry, announced during her earlier statement, on the grounds that a formal tribunal of inquiry would go over the same ground as the Fay inquiry, gathering evidence anew and subjecting it to cross-examination, and would therefore take too much time. However, this approach was opposed by those, including the former Prime Minister, Sir Harold Wilson, who demanded a 1921 Act inquiry held in public. For the Opposition, Sir Michael Havers, while denouncing the 1921 Act procedure as a 'blunderbuss', said he would support it in preference to the Government's proposal. Following the Government's clear defeat, on a technical

⁴⁸ HC Deb 16 February 1972 vol 831 c423

⁴⁹ HC Deb 19 April 1972 vol 835 c519

⁵⁰ HC Deb 26 May 1982 vol 24 cc311W-312W

motion, the Prime Minister, James Callaghan signalled the Government's retreat by announcing acceptance of the a tribunal of inquiry.⁵¹

7. The BSE Inquiry

More recently, the BSE Inquiry, which was a 'non-statutory inquiry' was announced in a statement by the then Minister of Agriculture, Jack Cunningham on 22 December 1997. He announced that the inquiry team had been given the following terms of reference:

To establish and review the history of the emergence and identification of BSE and new-variant CJD in the United Kingdom and of the action taken in response to it up to 20 March 1996; to reach conclusions on the adequacy of that response, taking account of the state of knowledge at the time; and to report on these matters by 31 December 1998 to the Minister of Agriculture, Fisheries and Food, the Secretary of State for Health and the Secretaries of State for Scotland, Wales and Northern Ireland.⁵²

On 26 October 2000, Nick Brown (the then Minister of Agriculture) made a statement following the publication of the inquiry report.⁵³ He confirmed that a debate would be held 'as soon as possible'.⁵⁴

The debate was held on 15 February 2001 on a motion for the adjournment of the House.⁵⁵

8. The Butler Inquiry

The *Review of Intelligence on Weapons of Mass Destruction* was published on 14 July 2004, as a return to the House.⁵⁶ The inquiry was chaired by Lord Butler of Brockwell, and was undertaken by a committee of Privy Counsellors.⁵⁷

Peter Hain, the Leader of the House, told the House that:

... The Butler review press office aims to publish the review on Wednesday 14 July. The timing and exact arrangements for publication are a matter for it, and we will announce the parliamentary arrangements when it makes its position clear. Whenever the report is published, the Prime Minister will make a statement—there is no

⁵¹ Barry Winetrobe, "Inquiries after Scott: the return of the tribunal of inquiry", *Public Law*, Spring 1997, pp18-31

⁵² HC Deb 22 December 1997 c679

⁵³ HC Deb 26 October 2000 c383

⁵⁴ *Ibid* c388

⁵⁵ HC Deb 15 February 2001 cc485-555

⁵⁶ HC 898 2003-04

⁵⁷ Lord Butler of Brockwell KG GCB CVO (Chair), Sir John Chilcott GCB, Ann Taylor MP, Michael Mates MP, and Lord Inge KG GCB DL. Michael Mates was made a Privy Counsellor on ____, specifically to allow him to take part in the Inquiry.

question about that, and he will be pleased to do so—and hon. Members will have a chance to debate the issue at an appropriate time.⁵⁸

The *Daily Telegraph* reported that Tony Blair would receive the report “24 hours before its publication”, whilst

The Tory and Liberal Democrat leaders will not see it until 6am tomorrow [the day of publication] and will have only a few hours to read it behind closed doors in Downing Street.

Charles Kennedy, the Lib-Dem leader, said this was inadequate and accused No 10 of behaving unreasonably. But Downing Street said it wanted to avoid the report being leaked, as happened with Lord Hutton’s conclusions into the death of Dr David Kelly.⁵⁹

The *Daily Telegraph* also reported that Lord Butler would publish the report at a press conference.⁶⁰ The opening statement made by Lord Butler, at the press conference, was made available on the Inquiry’s website.⁶¹

The Prime Minister, Tony Blair, made a statement in the House of Commons, at 1.30pm on the day the report was published, 14 July 2004.⁶²

The debate on Iraq, held on Tuesday 20 July 2004, on a motion for the Adjournment of the House, allowed the Butler report to be further debated. The Prime Minister opened the debate by saying:

I shall start with the Butler report and then move on to a more general discussion of Iraq.⁶³

However, press reports suggested that this had not always been the intention:

Tony Blair is to defend himself in a Commons debate next week against charges that he misled the public in the way he presented intelligence before the Iraq war.

The Prime Minister swiftly agreed to a demand from Michael Howard that he should appear in a planned debate on Iraq, which is now certain to be dominated by the fallout from the Butler report.

⁵⁸ HC Deb 1 July 2004 c440

⁵⁹ “Blair to be given Butler report 24 hours early”, *Daily Telegraph*, 13 July 2004

⁶⁰ *Ibid*

⁶¹ The Review of Intelligence on Weapons of Mass Destruction, PRESS CONFERENCE: OPENING STATEMENT BY THE CHAIRMAN, THE RIGHT HONOURABLE THE LORD BUTLER OF BROCKWELL KG GCB CVO, WEDNESDAY, 14 JULY 2004, <http://www.butlerreview.org.uk/news/launchstatement.pdf>

⁶² HC Deb 14 July 2004 cc1431-1451

⁶³ HC Deb 20 July 2004 c195

Peter Hain, the Leader of the Commons, had earlier refused a debate specifically on the Butler report. Mr Howard decided that he would therefore take part in Tuesday's Iraq debate so that he could raise the Butler findings and asked Mr Blair to do the same.

The original plan had been for Jack Straw, the Foreign Secretary, to lead for the Government and Michael Ancram, his shadow, for the Conservatives.⁶⁴

At the end of the debate, Tam Dalyell asked for a vote (described by Michael White of *The Guardian* as “a clutch of mainly Labour anti-war MPs staged a symbolic vote against the procedural motion to adjourn the house”).⁶⁵ The vote was lost by 41 votes to 255, and the motion for the Adjournment lapsed.⁶⁶

⁶⁴ Philip Webster and Greg Hurst, “Blair to replace Straw in Iraq debate”, *The Times*, 16 July 2004

⁶⁵ Michael White, “Blair survives Commons Iraq debate unscathed: Blair survives Iraq debate unscathed”, *The Guardian*, 21 July 2004

⁶⁶ HC Deb 20 July 2004 cc284-287