

CHAPTER NINE

THE EXECUTIVE

Constitutional and Administrative Law

THE EXECUTIVE

GENERAL INTRODUCTION TO THE EXECUTIVE

The executive is a person or group of people or bodies, which have an administrative or managerial authority and in the constitutional context is the executive body charged with governing the country.

We are concerned here with the *functions, powers and composition of the Executive* and with the various bodies that exist to facilitate the executive in the performance of its functions.

The relationship between the Executive and Parliament is examined along with the relationship between the executive and individual members of the executive and the manner in which these people reconcile their executive duties with their duties to Parliament and to the electorate.

Constraints on the exercise of this power exercised by Parliament as a whole, by way of Constitutional Conventions is considered, leaving an examination of judicial control of executive power to the next chapter.

COMPOSITION OF THE EXECUTIVE :-

- The Privy Council,
- The Government comprising
 - Cabinet, Non-Cabinet Ministers and the Prime Minister,
 - Government Departments and
 - The Civil Service plus
 - Government agencies such as the Police and the Prison Service

THE PRIVY COUNCIL

The Privy Council is an old institution dating back to Anglo Saxon times and grew out of the Curia Regis in the 13th century. It functioned as an advisory body to the monarch. The modern Cabinet developed out of the Privy Council. The Privy Council continued on its own for certain purposes. In all there are over 380 members of the Privy Council. Privy Councillors swear an oath of secrecy upon appointment. The members are appointed by the Queen, though it is traditional for certain office holders and personalities to be automatically included:

- Lord President of the Council; Ex Lord Presidents;
- Archbishop of Canterbury and ex Arch Bishops; Bishop of York;
- Lord Chancellors and ex Lord Chancellors;
- Cabinet Ministers and ex Cabinet Ministers;
- Senior members of the judiciary e.g. the Law Lords, Master of the Rolls, President of the Divorce Courts Division of the High Court etc.

The body does not normally meet as a whole except on the death of a monarch and then as a succession council. It also meets as a committee on such issues as proclamations; orders in council and orders the dissolution of and summons Parliament.

The Privy Council as a Court of Law.¹

The judicial function of the Privy Council is as a final court of appeal for commonwealth countries that have retained the court as their final court of appeal. This role is gradually diminishing.

The Judicial Committee of the Privy Council can also hear appeals from the disciplinary board of the General Medical Council, deliver advisory opinions on points of law referred it by the Crown, and applications for the disqualification of members of the House of Commons.

Post devolution, it can also hear Scottish criminal appeals on retained powers, a major constitutional change since Scottish criminal law was originally intended, after the Act of Union, to be preserved.

¹ For a review of recent Privy Council Cases see Chapter 11, Judicial Review.

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Her Majesty's Government as of 16 December 2004.

Cabinet

Prime Minister, First Lord of the Treasury and Minister for the Civil Service :

Deputy Prime Minister :

Chancellor of the Exchequer :

Secretary of State for Foreign and Commonwealth Affairs :

Secretary of State for Environment, Food and Rural Affairs :

Secretary of State for Transport and Secretary of State for Scotland :

Secretary of State for Health :

Chancellor of the Duchy of Lancaster :

Secretary of State for Northern Ireland :

Secretary of State for Defence :

Secretary of State for Trade and Industry and Minister for Women :

Secretary of State for Culture, Media and Sport :

Parliamentary Secretary to the Treasury and Chief Whip :

Secretary of State for the Home Department :

Chief Secretary to the Treasury :

Leader of the House of Commons, Lord Privy Seal and Secretary of State for Wales :

Minister without Portfolio :

Leader of the House of Lords and Lord President of the Council :

Secretary of State for Constitutional Affairs and Lord Chancellor for the transitional period :

Secretary of State for International Development :

Secretary of State for Work and Pensions :

Secretary of State for Education and Skills :

[The Rt Hon Tony Blair MP](#)

[The Rt Hon John Prescott MP](#)

[The Rt Hon Gordon Brown MP](#)

[The Rt Hon Jack Straw MP](#)

[The Rt Hon Margaret Beckett MP](#)

[The Rt Hon Alistair Darling MP](#)

[The Rt Hon Dr John Reid MP](#)

[The Rt Hon Alan Milburn MP](#)

[The Rt Hon Paul Murphy MP](#)

[The Rt Hon Geoff Hoon MP](#)

[The Rt Hon Patricia Hewitt MP](#)

[The Rt Hon Tessa Jowell MP](#)

[The Rt Hon Hilary Armstrong MP](#)

[The Rt Hon Charles Clarke MP](#)

[The Rt Hon Paul Boateng MP](#)

[The Rt Hon Peter Hain MP](#)

[The Rt Hon Ian McCartney MP](#)

[The Rt Hon Baroness Amos](#)

[The Rt Hon Lord Falconer of Thoroton QC](#)

[The Rt Hon Hilary Benn MP](#)

[The Rt Hon Alan Johnson MP](#)

[The Rt Hon Ruth Kelly MP](#)

Also attending cabinet:

Lords Chief Whip and Captain of the Gentlemen at Arms :

[The Rt Hon The Lord Grocott](#)

LAW OFFICERS

Attorney General :

Solicitor General :

Advocate General for Scotland :

[The Rt Hon Lord Goldsmith QC](#)

[The Rt Hon Harriet Harman QC MP](#)

[Dr Lynda Clark QC MP](#)

OFFICE OF THE DEPUTY PRIME MINISTER

Ministers of State :

[The Rt Hon Nick Raynsford MP](#)

[The Rt Hon Lord Rooker](#)

[The Rt Hon Keith Hill MP](#)

[Yvette Cooper MP](#)

[Phil Hope MP \(unpaid\)](#)

Parliamentary Under-Secretaries

CABINET OFFICE

Minister for the Cabinet Office :

[David Miliband MP](#)

HM TREASURY

Paymaster General :

Financial Secretary :

Economic Secretary :

[The Rt Hon Dawn Primarolo MP](#)

[Stephen Timms MP](#)

[John Healey MP](#)

LEADER OF THE HOUSE OF COMMONS

Parliamentary Under-Secretary :

[Philip Woolas MP](#)

DEPARTMENT FOR CONSTITUTIONAL AFFAIRS

Parliamentary Under-Secretaries

[Christopher Leslie MP](#)

[David Lammy MP](#)

[Baroness Ashton of Upholland](#)

[Anne McGuire MP](#)

Parliamentary Under-Secretary for Scotland Office
(reporting to the Secretary of State for Scotland)

Parliamentary Under-Secretary for Wales Office
(reporting to the Secretary of State for Wales)

[Don Touhig MP](#)

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FOREIGN AND COMMONWEALTH OFFICE

Minister of State (Trade)
(Mr Alexander is also a Minister of State in the Department of Trade and Industry)
Minister of State (Europe)
Minister of State (Middle East)
Parliamentary Under-Secretaries

Douglas Alexander
Dr Denis MacShane MP
The Rt Hon Baroness Symons of Vernham Dean
Bill Rammell MP
Chris Mullin MP

HOME OFFICE

Ministers of State
The Rt Hon Baroness Scotland of Asthal QC
Parliamentary Under-Secretaries

Hazel Blears MP
Desmond Browne MP
Caroline Flint MP
Fiona Mactaggart MP
Paul Goggins MP

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Minister of State (Environment)
Minister of State (Rural Affairs)
Parliamentary Under-Secretaries

Elliot Morley MP
The Rt Hon Alun Michael MP
The Lord Whitty
Ben Bradshaw MP

DEPARTMENT FOR INTERNATIONAL DEVELOPMENT

Parliamentary Under-Secretary

Gareth Thomas MP (Harrow West)

DEPARTMENT FOR WORK AND PENSIONS

Minister for Pensions
Minister for Work
Parliamentary Under-Secretaries

Malcolm Wicks MP
The Rt Hon Jane Kennedy MP
The Rt Hon Baroness Hollis of Heigham DL
Maria Eagle MP
Chris Pond MP

DEPARTMENT FOR TRANSPORT

Minister of State
Parliamentary Under-Secretaries

Tony McNulty MP
David Jamieson MP
Charlotte Atkins MP*

DEPARTMENT OF HEALTH

Ministers of State

Parliamentary Under-Secretaries

The Rt Hon John Hutton MP
Rosie Winterton MP
Melanie Johnson MP (Minister for Public Health)
The Lord Warner
Dr Stephen Ladyman MP

NORTHERN IRELAND OFFICE

Ministers of State
Parliamentary Under-Secretaries

The Rt Hon John Spellar MP
Ian Pearson MP
Angela Smith MP
Barry Gardiner MP

MINISTRY OF DEFENCE

Minister of State
Parliamentary Under-Secretaries

The Rt Hon Adam Ingram MP
The Lord Bach
Ivor Caplin MP

DEPARTMENT OF TRADE AND INDUSTRY

Minister of State
Minister of State (Trade)
Minister of State and Deputy Minister for Women
Parliamentary Under-Secretaries
Gerry Sutcliffe MP
Lord Sainsbury of Turville (unpaid)

Mike O'Brien MP
Douglas Alexander MP
The Rt Hon Jacqui Smith MP
Nigel Griffiths MP

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DEPARTMENT FOR EDUCATION AND SKILLS

Minister of State (Children)
Minister of State (Schools)
Minister of State (Universities)
Parliamentary Under-Secretaries

The Rt Hon Margaret Hodge MBE MP
Stephen Twigg MP
Dr Kim Howells MP
The Lord Filkin CBE
Ivan Lewis MP
Derek Twigg MP

DEPARTMENT FOR CULTURE, MEDIA AND SPORT

Minister of State (Sport)
Minister of State (Arts)
Parliamentary Under-Secretary

The Rt Hon Richard Caborn MP
The Rt Hon Estelle Morris MP
The Rt Hon Lord McIntosh of Haringey

HOUSE OF LORDS

Captain of the Yeoman (Deputy Chief Whip)
Lords in Waiting

The Lord Davies of Oldham
The Lord Bassam of Brighton
The Lord Evans of Temple Guiting CBE
The Lord Triesman

Baronesses in Waiting

Baroness Farrington of Ribbleton
Baroness Andrews OBE
Baroness Crawley

HOUSE OF COMMONS

Deputy Chief Whip and Treasurer of HM Household
Comptroller of HM Household
Vice Chamberlain of HM Household
Lords Commissioners

Bob Ainsworth MP
The Rt Hon Thomas McAvoy MP
Jim Fitzpatrick MP
Jim Murphy MP
John Heppell MP
Joan Ryan MP
Nick Ainger MP
Gillian Merron MP
Fraser Kemp MP
Gillian Merron MP
Paul Clark MP
Vernon Coaker MP
Margaret Moran MP
Bridget Prentice MP
Tom Watson MP
James Purnell MP (unpaid)
David Hanson MP

Assistant Government Whips

Parliamentary Private Secretary to the Prime Minister

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THE GOVERNMENT

The Government is headed by the Prime Minister and the Cabinet, who collectively (or otherwise) establish the Government policies that are implemented by the various government departments. The Executive is directly accountable to the electorate every five or so years and meanwhile subject to scrutiny by Parliament, on behalf of the electorate, both in the House of Commons and the House of Lords through debates both on

- government policy (votes of no confidence),
- Parliamentary Question Time and
- during the passage of legislation.

No government can operate without finance. The principal funding for activities of the state is through taxation (the E.C. also provides funds for a wide range of activities today – albeit out of funds paid to the E.C. by the UK.). Since taxation requires annual renewal by Act of Parliament, scrutiny of government activities is possible

- by finance committees of the Houses of Parliament,
- during the budget speech and the passage of the Finance Bills.

Functions of the Executive / Government

The function of the executive is to govern the country. The main tasks of government are to determine

- economic, social and political policies for the direction of the country;
- the development and implementation of policies in regard to foreign affairs and the relationship between the U.K. and Commonwealth countries - including
 - the signing of treaties,
 - defence of the realm,
 - declarations of war and peace and
 - organisation of the armed forces.

Historically, the executive represented those organs of government that carried out the will of the Monarch, who ruled on the basis of strength arising from

- the support the Crown received from conquest (William I);
- support earned from patronage (the grant of Earldoms etc) and
- under the doctrine of rule by divine right.

A distinction can be drawn between

- those powers exercised personally by the Crown, and
- those exercised by the ministers of the Crown in the name of the Crown, and administered by Crown Servants.

Today, the legitimacy of the exercise of power by the executive arises from the fact that the Government, the directing mind behind the executive, is returned to power by the people through the ballot box.

The Powers of the Executive / Government :

These arise in two ways: -

- 1). **Acts of Parliament and delegated legislation** which enable government departments to carry out their functions.
 - a) Control over the creation of such powers is exercised by the Houses of Parliament. Where the government commands a majority in the House of Commons it can normally secure the passage of legislation required to carry out its policies.
 - b) Control of the exercise of these powers is based respectively on
 - i) Parliamentary control of the executive, and
 - ii) by the courts exercising the prerogative powers of Judicial Review.
- 2). **The Royal Prerogative** - special powers available to the Crown. Exercise of the Royal prerogative is controlled by both
 - a) Parliament and
 - b) Judicial Review.

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Exercise of Executive Power

Control of the legislative and executive functions of government is primarily concentrated in the hands of the ministers of the crown and in particular in the hands of the Cabinet, which is led by the Prime Minister. Not all ministers of the crown are cabinet ministers. The Sovereign retains a small number of executive powers, which the Sovereign exercises personally. Nonetheless, the greater number of the prerogative powers of the crown are exercised by ministers of the crown on behalf of the crown.

THE CABINET

This emerged from the Privy Council in Charles II's reign, as a separate group called a cabal, to advise the monarch. At the same time, political parties started to crystallise, the first being the Whigs and Tories. Once parliament became the primary political power-house, a coherent cabinet became necessary in order to command a majority in the House, with the monarch seeking advice from the controllers of the House. Today, a politically united cabinet presided over by the Prime Minister is the norm.

The Cabinet has great power with regards to Parliament, and perhaps more importantly to the Prime Minister. This is evident from the argument that the Prime Minister cannot survive without the support of his or her Cabinet. It is worth considering where the true power lies within the Executive, is it the Prime Minister or ultimately the Cabinet, as was evident in the resignation of Mrs Thatcher when a significant number of her senior cabinet ministers turned against her.

THE OFFICE OF PRIME MINISTER

The notion of Prime Minister has developed from convention, as has most of the United Kingdom's constitution. The office of Prime Minister originated from the early 18th century. The first official recognition of the post of Prime Minister derives from the Treaty of Berlin 1878, and statutory and other formal references to the office remain scant.

Lord Morely stated: *"The Prime Minister is the keystone of the Cabinet arch. Although in Cabinet all its Members stand on an equal footing, speak with an equal voice, and, on the rare occasions when a division is taken, are counted on the fraternal principle of one man, one vote, yet the head of the Cabinet is primus pares, and occupies a position which, so long as it lasts, is one of exceptional and peculiar authority"*.

The Prime Minister is the First Lord of the Treasury, though the duties will normally be minimal. Until 1937 the Prime Minister's salary was provided for as First Lord of the Treasury. The Prime Minister also holds the office of Minister for the Civil Service and maintains control over the Civil Service. The title Prime Minister dates from 1905. The law reports and legislation merely recognise the existence of the Prime Minister and the Cabinet by providing for salaries and pensions. They are de facto offices, governed mostly by conventions.

Since 1902,² the Prime Minister has come from the Commons. Convention now holds that the Prime Minister must sit in the House of Commons, though a member of the Lords may relinquish his title and stand for Parliament as an M.P. and thus be Prime Minister.

Selection of the Prime Minister

Under the Royal Prerogative, the Crown has the power to appoint whosoever she pleases. The Crown, by convention, will appoint as Prime Minister the leader of the political party that can command a majority in the House of Commons after a general election. This means that only a minority of the population selects the actual Prime Minister or leader of a political party at a general election.

There are a number of ways in which the Prime Minister is selected. All of the political parties in the United Kingdom select their leader by a ballot. The people who normally select the leader will range from Members of Parliament, Party members, Trade Unions and party constituencies.

- **The Labour Party** ballots its M.P.s, trade unions and party constituencies. The procedure was reformed by Neil Kinnock and John Smith, moving away from the 'block' union votes towards one member one vote. The current Prime Minister Tony Blair was elected under the reformed system.
- **The Conservatives** : Tories (since 1964) ballot their M.P.s.
- **The Liberal Democrats** have only had one election for the leader of its party. The circumstances under which an election may be called are contained within the party's constitution. The Members of Parliament, Members of Local Parties and specified associate organisations cast votes.

² Lord Home in 1963 being a brief exception

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Generally the Prime Minister is also '*elected*' by the people since he or she leads the party into the election, usually having achieved the leadership whilst in opposition. Changes to leadership in opposition are common. Some commentators regard elections as Prime Ministerial elections. However, occasionally, a Prime Minister may lose a leadership contest (Thatcher), resign for health reasons (Macmillan) or retire (Wilson). Thus Major, Home and Callaghan became Prime Minister without a general election victory.

Until the 1990 challenge to Thatcher there had been no serious threat of a Prime Minister being unseated whilst in office, this century. Thatcher, having failed to secure an outright win following a leadership challenge, was forced to stand-down from the 2nd round on 22-11-90 even though she had only been 4 votes short of an outright win. Thatcher won 54.8% of the votes in the first round of the leadership contest. Under the Party's Rules she needed a 15% majority but fell short by 1.1%. Having announced her intention to stand in the second round of the leadership contest, she was advised by members of her cabinet that she would be defeated and announced her resignation the next morning. The contestants in the 2nd round on 27-11-90 were Michael Heseltine, Hurd and John Major.

The next significant challenge to the leadership of a political party was in the summer of 1995 when the Welsh Secretary, John Redwood, challenged John Major for the leadership of the Conservative Party. John Major resigned as leader of the Conservative Party. When the votes was cast in the first round of the leadership contest, John Major secured 66% of the parliamentary party's vote. Ultimately, after losing the 1997 election Major was replaced by Haig, followed by Ian Duncan Smith, who in 2003, despite securing 600 plus gains at the May 2003 local elections was replaced by Michael Howard.

Whilst commanding the largest government majority for over a century, Tony Blair's tenure on office has been subject to much speculation. More than 200 Labour Backbenchers opposed Prime Minister Tony Blair's involvement in the Iraq War and it would appear that he was prepared to step down as leader if defeated in a vote on the commencement of hostilities. With the cessation of hostilities, he appeared to have consolidated his position as leader. However in spite of denials and declarations of solidarity, since announcing he will only run for one more term open rivalry appears to have broken out between Blair and Brown for the premiership. Few commentators expect Blair to serve a full term, but Brown's survival is not guaranteed.

Functions of the Prime Minister

- to form a government:
- to choose the members of the cabinet :
- to chair cabinet meetings :
- to decide what government departments should exist and
- to decide what functions these departments will fulfil :
- to advise the sovereign :
- to advise the House of Commons of government policy and
- to defend it from criticism : and
- to represent the government in foreign affairs.

Powers of the Prime Minister

Once a Prime Minister is in office, the first task is to form a Cabinet. From a constitutional point of view, the appointment of Ministers to a Cabinet is the role of the Monarch, but in practice it is the Prime Minister who determines who shall be appointed, making a recommendation to the Monarch which is automatically accepted.

Certain posts will always be in the Cabinet. For instance, the Chancellor, the Secretary of State for Foreign Affairs, the Home Secretary, the Secretary of State for Scotland and the Leader of the House of Commons. A Cabinet will normally comprise approximately 20 senior Members of the Government, the actual number is not fixed, and it is entirely for the Prime Minister to determine.

There have been attempts in modern times to determine the powers of the Prime Minister. It is frequently asked whether we have

- Prime Ministerial Government:
- Presidential Government or
- Cabinet Government.

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The problem is that those who pose the questions often do not sufficiently define the terms. A lack of information hinders conclusions being reached. Many of the activities of the cabinet are intended to be secret. One has to rely on leaks and the biographies of retired politicians e.g. The Crossman Diaries.

The Prime Minister has considerable powers of patronage. He / she appoints amongst others:

- Senior Civil Servants in his / her capacity as Minister for the Civil Service;
- Nomination of senior members of the judiciary,
- Bishops and
- The Parliamentary Commissioner for Administration.
- Ministers (including Cabinet Members)

The selection of a good cabinet can enhance a Prime Minister's reputation. When all goes well the Prime Minister can hope to take the credit. However, when things go badly the Prime Minister may direct attention to the 'responsible' ministers.

The Prime Minister has the power to determine which departments exist, are created, merged or abolished. This can in part determine the size of the cabinet and therefore how many potential senior members have to or can be offered posts. One way to get rid of a minister or to undermine his power is to reduce the remit of a government department, or to merge it with another department.

According to **Rodney Brazier** "*A Prime Minister's main political strength comes from the Cabinet and . . . from the parliamentary party*".³

The Prime Minister controls the way in which the Government is run, determining how the tasks of government should be created, amalgamated or abolished. The Prime Minister may take interest in different areas of Government and may carry out the policy through the agency of a Minister whom he has appointed.

- A Prime Minister will be expected to take a special interest in foreign affairs, the economy and defence. Tony Blair fronts UK negotiations with the European Community. He has actively engaged in the Middle East peace process and subsequently stood alongside the US in the 2003 Iraq war.
- On rare occasions the Prime Minister may intervene in major industrial disputes and other issues, which raise concern.
- The Prime Minister may authorise an individual Minister to take decisions without waiting for a Cabinet meeting.
- When a Cabinet Committee is dealing with a problem, the Prime minister may take the chair of the Committee and report on action taken by the Committee to a later Cabinet meeting.

Cabinet Committees : were established to support the efficiency of the Cabinet. Mrs Thatcher established the first four Cabinet Committees when she became Prime Minister. The Committees covered areas such as defence, overseas policy, economic strategy, home affairs and a legislation committee.

The Cabinet Office : assists the day to day running of the Cabinet. The Office was established in 1917 and forms an important role in assisting the Cabinet. Barnett argues that the Cabinet Office has become a form of 'Think Tank' for the benefit of the Prime Minister.

The Prime Minister's Power to Appoint.

How much choice the Prime Minister has in the appointment of Cabinet Ministers is questionable since the senior members of the party would expect an appointment, though it is often the case that the Prime Minister will decide just what that office will be. Such decisions will often be made for complex reasons.

Wilson gave Tony Benn a post as Minister for Energy to bring him into the cabinet and to muffle him under the rules of Collective Responsibility, rather than leave him to criticise the government from the backbenches. The ploy was not entirely successful.

The Prime Minister's Power to Dismiss Ministers.

The Prime Minister has the power to remove or dismiss ministers. Dismissal is relatively rare. Much depends much on the personality and power base of the Prime Minister and the availability of alternative talent. Wilson dismissed Heffer, but in general cabinet reshuffles are preferred to dismissal, moving a minister

³ R Brazier (1991) 54 MLR 471, 477

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sideways or to a less important post. Nonetheless, Macmillan dismissed a third of his cabinet including senior ministers. Mrs Thatcher likewise dismissed / replaced a large number of WETS (eg Pym, Stevas and Gilmour). She became in time the only remaining member of the first (1979) wet dominated Cabinet. The Prime minister may alternatively invite a minister to resign, or the person might feel that they can no longer remain within the cabinet if their ideas are too far removed from those of the cabinet and thus they will offer to resign. Thus in recent times Michael Heseltine, Nigel Lawson and Geoffrey Howe have resigned.

Constraint's on the Prime Minister's powers to appoint and dismiss.

On times leaving a leading party member out of the cabinet or dismissing a leading minister may be unwise, since once free from the constraints of collective cabinet responsibility and silence. Heseltine represented less of a threat to Thatcher when in the cabinet. Once outside, he was able to disassociate himself from 'unpopular' Thatcher measures, which cabinet membership would have prevented. It represented his first step in an unsuccessful campaign to replace Thatcher as leader of the party.

The power of ministers to threaten to resign.

A minister can threaten to resign in order to press his or her point of view (e.g. Clare Short). A senior person's resignation can lead to the public feeling that there is a lack of unity in the government- particularly if more than one Minister resigned.

Both Geoffrey Howe and Nigel Lawson used threats of resignation to force Thatcher to assent to the Madrid Summit and to commit the U.K. to eventually joining the E.M.S. Thatcher then resorted to saying that we would join when the time was right but reserved judgement on the appropriateness of that time to herself. Lawson first and subsequently Howe resigned when it became evident to them that Thatcher would not adopt the pro-European stance they thought necessary to restore and maintain U.K. economic stability. Both felt that Thatcher failed to consult the cabinet on these issues and that she was pursuing policies, which the majority of the cabinet did not agree with.

The Relationship between the Prime Minister and Cabinet.

The Prime Minister has the power, in relation to the cabinet, to decide how many and what type of cabinet committees exist. The Prime minister can apparently decide what the cabinet has decided and reach his / her conclusions as to what was said, especially since voting is not a usual feature of the cabinet and even then the Prime Minister can decide what the vote decided.⁴ This view is however questionable. Furthermore, a Prime Minister probably cannot prevent a determined cabinet from discussing issues it wishes to discuss.

It is possible through the use of kitchen committees and cabinets for important decisions to be made outside the main cabinet and for their findings to be reported back to the main cabinet when it too late to change them e.g. defence issues. Subsequently, committee decisions are in any case likely to be endorsed by the cabinet. A Kitchen cabinet often consists of a small group of advisers who may hold no office at all (e.g. Marcia Williams and Harold Wilson. She was rewarded with a place in the Lords). Cabinet committees are essential however to separate the wheat from the chaff so that the cabinet can concentrate on essential decision-making. It may well be that the Cabinet is called upon to do little more than to endorse some of the decisions of Cabinet committees- hence their great power and importance.

The doctrine of collective responsibility reinforces the powers of the Prime Minister. The effect of this doctrine is to restrict Ministers from openly criticising the government's policy. The importance of the doctrine for silencing potential critics is underlined by the fact that many decisions of government are not taken by the cabinet but by the Prime Minister.

The personality of the Prime Minister and that of the ministers affects the nature of the cabinet and it's relations with the Prime Minister. Compare the 1964 cabinet where Wilson was by far the most experienced person, since the Labour party had been out of office for a long time. The previous Labour Ministers had all retired and all the 1964 ministers were freshers. Thus Wilson was a dominant figure. However, the Attlee Government was comprised of a lot of people with extensive experience in the Wartime administration. The second Wilson administration saw a situation in which the Prime Minister was faced with much more experienced colleagues.

⁴ Mackintosh : The British Cabinet.

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Whilst the Prime Minister is supposed to merely be *primus inter pares*, the post of Prime Minister creates a vehicle for the augmentation of the power of the office holder, leading to the view that once appointed an individual grows into the office. The Prime Minister has more opportunities to present, defend and support the government's policy in Parliament and elsewhere. The Prime Minister is also in a position to control the amount of information given both to cabinet members and to the media.

The Prime Minister's standing in the party and the strength of the party will also affect the relationship. When things go well the power of the Prime Minister is seemingly increased. In practice though there are complications. A situation of clear majority government will be one where dissent is possible - a luxury that could not be afforded with minority or a threatened majority situation.

The Prime Minister gets the most publicity. This is an asset to the party especially since general elections may be considered as prime ministerial elections. As long as the Prime Minister appears to be popular it makes that persons position unassailable. The Prime Minister is considered to be the most important factor at an election. Macmillan later admitted that he had neglected the power of the media and especially T.V. whilst Wilson went for special training sessions to learn how to present himself on the television. A party leader with a poor public image may doom that party to a role in opposition. The public portrayal of Kinnock in the 1980's as an affable buffoon or as 'the Welsh Windbag' may have helped to keep Labour out of power. The previous Labour opposition leader Michael Foot was also portrayed as having image problems. Haig did not capture the attention of the public and it appears that Ian Duncan Smith is not considered a strong media personality either.

Whilst increased media coverage can benefit the Prime Minister, the down side of this is that the Prime Minister can also be a target for a disaffected press - especially when the press gets a feeling for a change at the top. The press may be able to manufacture an appearance of public opinion. John Major appears to have been very harshly treated by the media.

The Prime Minister is an important International figure. This is very important for the U.K. regarding trade and international relations. It also adds to the prestige of a Prime Minister.

The Prime Minister has the best channels of information. This is especially true since the Prime Minister is the minister for the Civil Service and may also benefit from the services of outside advisors.

The Prime Minister determines the date of elections.

Conventionally this is possible without the need to consult the cabinet. If the Prime Minister leaves it too late in a term of office the choice is removed- he runs out of time. (The Queen, in certain circumstances, can refuse a request for dissolution.) It is inaccurate to call this particular power of the Prime Minister a power over the cabinet. It is much more likely to be a power over the opposition.

Limitations on the Prime Minister's Power

According to **L.S.Amery** - "The central directing instrument of government, in legislation as well as in administration, is the Cabinet. It is in Cabinet that administrative action is co-ordinated and that legislative proposals are sanctioned. It is the Cabinet which controls Parliament and governs the country."

According to **G.Moodie**.⁵ "... the prime minister is constitutionally constrained to work with and through others. These others must, in virtue of this fact alone, place some limit on the prime minister's power, and thus share the burden of responsibility - a fact that may assist him [*her*] in carrying the load of office as much as it may frustrate his [*her*] personal wishes."

In reality many of the powers of the Prime Minister will be constrained in various ways. See if you can come up with some suggestions of your own.

⁵ **G.Moodie**. The Government of Great Britain.
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EXAM PREPARATION - ESSAY QUESTIONS – THE PRIME MINISTER

Exam question frequently focus on the question as to whether we have Prime Ministerial Government: Presidential Government or Cabinet Government. This calls for :-

- 1 A definition of these concepts and their constitutional significance. A comparative analysis between the UK and the US, etc. would be useful.
- 2 An evaluation of the status of the office of Prime Minister in the UK. An awareness of the personality and modus operandi of past and present Prime Ministers is necessary, coupled with an understanding of the political circumstances surround their period in office.

Anecdotal evidence drawn from current affairs and history on the likes of :-

Tony Blair : John Major : Margaret Thatcher : James Callaghan : Harold Wilson : Sir Alec Douglas Home : MacMillan : Sir Anthony Eden : Sir Winston Churchill : Clement Atlee etc can be used to demonstrate powerful personalities : consensus : large and small power bases: strong and weak economic / political circumstances : the impact of world events etc assist in making such an evaluation.

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MINISTERIAL RESPONSIBILITY

Introduction

The history of ministerial responsibility can be traced back to liberal democratic government as it has evolved since 1832. This is commonly referred to as the 'Westminster Model'. The 'Westminster Model' is the convention of individual ministerial responsibility, and acts as the point of reconciliation between the concept of executive accountability to Parliament and the Doctrine of the Rule of Law, underpinned by judicial supervision on the basis of 'ultra vires'. The resignation of the Minister of Agriculture, Sir Thomas Dugdale, because he took personal responsibility for mal-administration by officials about which he knew nothing, is generally held to be the test case for ministerial responsibility.

Responsibility and Accountability

Government ministers are held accountable to the electorate via the Doctrine of Ministerial Responsibility which can be discussed under two basic areas :-

- 1). Individual ministerial responsibility which itself subdivides into two categories :-
 - a). Responsibility for the government department.
 - b). Responsibility for personal misbehaviour.
- 2). The collective responsibility of cabinet ministers.

Actual responsibility stems from accountability. It can be observed that :-

- Ministerial Accountability is a convention without statutory force.
- There has never been universal agreement about the terms of that accountability
- There is no independent source of authority that can determine whether the convention has been observed in any given circumstance.

Barnett (1997) considered that the convention of ministerial responsibility was central to the constitution and played a fundamental role in the relationship between the executive and Parliament.

Definitions of Ministerial Responsibility

The difficulty in providing a definition of ministerial responsibility was acknowledged by a House of Commons Public Service Committee: "There have always been elements of ambiguity and confusion in the convention of individual ministerial responsibility . . . There is no comprehensive or authoritative statement of it, which has binding force, and it cannot be enforced by legal sanctions. As a result, the way in which it is used in practice tends to be variable and inconsistent".⁶

Marshall and Moodie (1971), describe ministerial responsibility as: "Ministers are responsible for the general conduct of Government, including the exercise of many powers legally vested in the Monarch; and ultimately through Parliament and parties, to the electorate"

According to **Leyland and Woods**, the classical (perhaps-mythical) doctrine of ministerial responsibility can be summarised in its essence as: ". . . The minister takes all the praise and all the blame".

Legal Responsibility

This means that a minister is personally liable for the actions that he has ordered or authorised to be done and theoretically the minister can be sued. **Dicey** saw this as a central feature of the "Rule of Law", a type of political morality or 10 commandments of constitutional law.

In more recent times, it has become less important, as a result of the **Crown Proceedings Act 1947**, since which time the Crown can be sued for the actions of its ministers as a result of vicarious liability. It is embedded into the constitution that the Sovereign may not be personally sued or prosecuted in the courts. However, servants or officers of the Crown who commit crimes or civil wrongs are, and always have been, subject to the jurisdiction of the courts. This jurisdiction extends to contempt of court.⁷ Public authorities other than the Crown were legally liable for the wrongful acts of their officials or servants.⁸ Government Departments can also now be sued as a result of the **Crown Proceedings Act 1947**.

⁶ From the Second Report of the Public Service Committee, HC 313, 915-6, Ministerial Accountability and Responsibility

⁷ See **M v Home Office** (1992)

⁸ See **Mersey Docks and Harbour Board Trustees v Gibbs** (1866).

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The legal implications of ministerial responsibility can be traced back to **Dyson v A.G.**,⁹ where Farwell LJ stated, in a case that involved an unwarranted demand for information on the Inland Revenue, that: "If ministerial responsibility were more than a mere shadow of a name, the matter would be less important, but as it is, the Courts are the only defence of liberty of the subject against departmental aggression". This led **Leyland and Woods**,¹⁰ to observe that it is not academic opinion alone that is critical of the traditional doctrine of ministerial responsibility but that this criticism has long also found favour in judicial circles.

Ministerial Responsibility and the Courts.

Ministerial responsibility is based upon convention, which will not be enforced by the courts. However, there is case law, which indicates that the courts have recognised the principle of ministerial responsibility. In **Carltona v Commissioner of Works**,¹¹ it was stated by the court that: "The Minister is responsible. It is he that must answer before Parliament". This view was supported in **R v Secretary of State for the Home Department, ex parte Oladehinde**.¹²

A minister, as indeed any other M.P. is subject to the ordinary law of the land and can be indicted for criminal wrongdoing or sued under civil law. **M v Home Office & Anor., sub nom, Re M**.¹³ held that government ministers can be held liable for contempt of court. **Rowling v Takaro Properties Ltd.**¹⁴ concerned whether an action in negligence lies against a minister for erroneous exercise of discretion. Members of Parliament benefit from **Parliamentary Privilege**, which facilitates free speech within the chambers of Parliament, thereby according a level of protection against defamation actions. In **Neil Hamilton v Al Fayed (No.1)**¹⁵ a libel action by a former Member of Parliament, which related to a television broadcast following parliamentary investigations into his conduct as an MP, was not to be struck out as an abuse of process, where the MP had waived his protection from parliamentary privilege under **s13 Defamation Act 1996**.

Private citizens may have remedies under Judicial Review where they have suffered a personal loss due to the incorrect exercise of discretion by a government department or by a minister. Even if the court finds against the minister this is unlikely to have political ramifications for the minister.

Both Houses also have internal measures to deal with disreputable conduct by members both within and outside the House. Parliament can act as a court and suspend members on a temporary or permanent basis. Any member convicted by a court of a serious criminal offence would most likely resign to prevent the House taking action, particularly if the member receives a custodial sentence. Since the Neil Hamilton Affair the House of Commons now has a Select Committee that rules on misbehaviour and has introduced new regulation relating to disclosure of earnings and conflicts of interest such as membership of societies.

Political responsibility

This responsibility is owed to Parliament and is considered to be the most important aspect of Ministerial Responsibility today. Theoretically at least, the Minister is accountable to Parliament, on behalf of the electorate, since he has to answer questions regarding his personal behaviour and regarding the activities of his government department. Misbehaviour / and bad administration of a ministry, thus exposed could have an adverse effect at the next election if the government fails to censure the Minister. It could even provoke a vote of no confidence in the government, which could bring the government down.

The opposition parties take advantage of such indiscretion to expose the government. Unless there is something more newsworthy occurring at the same time, the media will usually have a field day. The actual extent of the responsibility and its effectiveness in holding the minister accountable to Parliament and the electorate is another matter. The government can only remain in office as long as it controls a majority in the Commons. Backbenchers will rarely vote themselves out of office. A vote of no confidence usually fails.¹⁶

⁹ **Dyson v Attorney-General** [1911] 1 KB 410

¹⁰ **Leyland and Woods** (1997)

¹¹ **Carltona v Commissioner of Works** (1943) 2 All ER 560,

¹² **R v Secretary of State for the Home Department, ex parte Oladehinde** [1991] 2 AC 254.

¹³ **M v Home Office & Anor., sub nom, Re M** (1993) HL Lords Keith, Templeman, Griffiths, Browne-Wilkinson & Woolf. 27/7/93

¹⁴ **Rowling & Anor. v Takaro Properties Ltd.** (1987) P.C. appeal from the C.A. New-Zealand.

¹⁵ **Neil Hamilton v Al Fayed (No 1)** (2000) HL (Browne-Wilkinson, Steyn, Cooke, Hope, Clyde) Ruling 7/10/99 : Reasons 23/3/2000

¹⁶ See **Leyland and Woods** (1997) p31.

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INDIVIDUAL MINISTERIAL RESPONSIBILITY

Responsibility for government department.

This concerns matters which individual ministers will be responsible for e.g. Heseltine when he was in charge of the Ministry of Defence would only have been personally responsible for affairs emanating out of that ministry and no other.

With regard to departmental activities, the normal account of matters is that the minister is not responsible for the day to day affairs of the department, e.g. in the field of Social Security Benefit, a minister could not be held responsible for the payment of the wrong amount of benefit to a claimant.

If the doctrine is to have any real meaning then incompetence in office should be a legitimate reason for removal from office. However, it would appear that ministers are normally only held responsible for consequences arising out of pursuing matters of policy initiated by the minister.

It has been suggested that Sir Thomas Dugdale need not have resigned over the Crichton Down Affair since the events were beyond his control, and that he was too hasty in resigning when he did. There have been other accounts of this incident that have suggested that Dugdale was complicit. In relation to their departments, Mr. Thomas in 1936 and Dr. Dalton in 1947 allowed the premature release of budget details and thus had to resign, which was more about wrong doing than incompetence or bad policy. The Doctrine of Ministerial Responsibility appears to provide a poor system of accountability. On the few occasions that ministers do resign, perhaps they should not have done so. It is clear that often things go wrong and no one takes the blame. A recent example is to be found in the Scott report.

The problem lies in the area in between the two extremes. Neither the books nor examples make the situation clear. Thus where a mistake in day-to-day administration is the result of a poor system of administration, the minister may be responsible. Sometimes statutes will determine the responsibilities of a minister, e.g. Public Corporations are a creation of statute and may state the role of the minister involved. However, even this general proposition is hedged since at times ministers have to intervene, even when the action taken is precluded by the statute. Thus, whilst they might not be concerned under the statute with internal policy, if the government has a wage policy for public sector employees the minister will be bound to intervene.

In 1996 **Sir Richard Scott's** report on the arms for Iraq affair detailed numerous occasions on which ministers failed to inform Parliament adequately about their policy on exporting arms and machine tools to Iraq, and did not reveal changes they had made in the policy. Their answers to repeated questions had been misleading but ministers persuaded the inquiry that they had not intentionally misled Parliament.

However, without the provision of full information it is not possible for Parliament to assess what consequences, in the form of attribution 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 the democratic process. When the vote was taken on the report in the Commons the government won by one vote and consequently no ministers resigned.

Sir Richard Scott who conducted the inquiry into the export of defence equipment and dual-use goods to Iraq was clear that if ministers were not personally responsible then they must give a full account to Parliament. Sir Richard's report, prompted by the collapse, in 1992, of the prosecution of three directors of Matrix Churchill for a breach of the ban on exports of arms or products to Iraq, which could be adapted to military use, analysed the topic of ministerial accountability in great detail. One aspect of the investigation of ministerial accountability concerned the policy on defence-related exports to Iraq and Iran, the so-called '*Howe Guidelines*'. Scott formed the view, contested by the government, that the Howe Guidelines had been changed so that they were less restrictive towards Iraq.

This change had not been announced to Parliament. Answers given to Parliamentary questions and in correspondence on the Howe Guidelines, by the junior Foreign Office minister, William Waldegrave, maintained that they remained unchanged. Scott found that the ministerial obligation to give a full account had not been properly discharged and in his report and in subsequent speeches he put forward possible reforms. Scott's report led the House of Commons Public Service Committee to revise the terms of reference of an inquiry it was conducting on ministerial accountability and responsibility. One of the

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recommendations it made was that the House of Commons should adopt a resolution on accountability. A resolution was approved by the House in March 1997, though it was not the draft proposed by the committee. One of the differences concerned the extent of the justification for ministers withholding information when providing an account to Parliament. The committee's version stated that withholding information should be done 'exceptionally'. The government's version stipulated that the refusal to provide information would only be justified when 'disclosure would not be in the public interest', which should be decided in accordance with the relevant statute and the government's Code of Practice on Access to Government Information. The difficulty here is that the extent of the public interest is not well defined, giving ministers significant scope for withholding information.

The obligation to provide information requires that ministers should not mislead. If a minister knowingly misleads the House then it is expected that the minister will make an offer to resign to the Prime Minister. Inadvertent errors should be corrected at the earliest opportunity. Again this is not as tight as it might appear. How great is the obligation upon ministers to ensure that they are not ignorant of matters? What happens after they have corrected an inadvertent error?

The Ministerial Code: A Code of Conduct and Guidance on Procedures for Ministers,¹⁷ has been revised in line with the Commons resolution, including an expectation of an offer to resign from a Minister who knowingly misleads Parliament.

The Code was introduced following the Nolan Inquiry into standard in public life. Nolan proposed **Seven Principles of Public Life**, namely :-

Selflessness : Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity : Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity : In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability : Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness : Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty : Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership : Holders of public office should promote and support these principles by leadership and example.

In the foreword to the amended Ministerial Code in 2001 Tony Blair wrote *"In issuing this Code, I should like to reaffirm my strong personal commitment to the bond of trust between the British people and their Government. We are all here to serve and we must all serve honestly and in the interests of those who gave us our positions of trust. I will expect all Ministers to work within the letter and spirit of the Code. Ministers will find it a useful source of guidance and reference as they undertake their official duties in a way that upholds the highest standards of propriety. I believe we should be absolutely clear about how Ministers should account, and be held to account, by Parliament and the public. The first section of the Code sets out these responsibilities clearly, following the terms of the House of Commons Resolution on Ministerial Accountability carried in March 1997. I commend the Code to all of my Ministerial colleagues.*

The Code is made up of 10 sections and is 146 paragraphs long. The sections and sub-headings are set out below with selected extracts

¹⁷ **The Ministerial Code: A Code of Conduct & Guidance on Procedures for Ministers** (Cabinet Office, 1997) updated 2001
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1. Ministers of the Crown

Ministers of the Crown are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties. This Code provides guidance Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards The Code should be read against the background of the overarching duty on Ministers to comply with the law ... and the following principles of Ministerial conduct:

- i. Ministers must uphold the principle of collective responsibility;*
- ii. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and 'next steps' agencies;*
- iii. it is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;*
- iv. Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest which should be decided in accordance with the relevant statutes and the Government's Code of Practice on Access to Government Information;*
- v. Ministers should similarly require civil servants who give evidence before Parliamentary Committees on their behalf and under their direction to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code;*
- vi. Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests;*
- vii. 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;*
- viii. Ministers in the House of Commons must keep separate their roles as Minister and constituency Member;*
- ix. Ministers must not use government 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.*

2. Ministers and the Government

Attendance at meetings of the Privy Council

Cabinet and Ministerial Committee business

Ministerial Committees

The priority of Cabinet meetings

Preparation of business for Cabinet and Ministerial Committees

Cabinet Conclusions and Ministerial Committee minutes

13. The record of Cabinet and Committee proceedings is limited to the conclusions reached and such summary of the discussion as is necessary for the guidance of those who have to take action. The Cabinet Office are instructed to avoid, so far as practicable, recording the opinions expressed by particular Ministers. Matters of special secrecy or political sensitivity may be recorded in a limited circulation annex.

Collective responsibility

16. The internal process through which a decision has been made, or the level of Committee by which it was taken, should not be disclosed. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the Government. They are, however, normally announced and explained as the decision of the Minister concerned. On occasions it may be desirable to emphasise the importance of a decision by stating specially that it is the decision of Her Majesty's Government. This, however, is the exception rather than the rule.

17. Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed in Cabinet and Ministerial Committees should be maintained. Moreover Cabinet and Committee documents will often contain information which needs to be protected in the public interest. It is therefore essential that, subject to the guidelines on the disclosure of information set out in the Code of Practice on

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Access to Government Information, Ministers take the necessary steps to ensure that they and their staff preserve the privacy of Cabinet business and protect the security of Government documents.

18. *The principle of collective responsibility and the need to safeguard national security, relations with other countries and the confidential nature of discussions between Ministers and their civil servants impose certain obligations on former Ministers who are contemplating the publication of material based upon their recollection of the conduct of Government business in which they took part. They are required to submit their manuscript to the Secretary of the Cabinet and to conform to the principles set out in the Radcliffe Report of 1976 (Cmnd 6386) (see also paragraph 107).*

Cabinet documents

The Law Officers

By convention, written opinions of the Law Officers, unlike other Ministerial papers, are generally made available to succeeding Administrations.

23. *When advice from the Law Officers is included in correspondence between Ministers, or in papers for the Cabinet or Ministerial Committees, the conclusions may if necessary be summarised but, if this is done, the complete text of the advice should be attached.*

24. *The fact and content of opinions or advice given by the Law Officers, including the Scottish Law Officers, either individually or collectively, must not be disclosed outside Government without their authority.*

Legal proceedings involving Ministers

3. Ministers And Parliament

Parliamentary statements and other Government announcements

27. *When Parliament is in session, Ministers will want to bear in mind the desire of Parliament that the most important announcements of Government policy should be made, in the first instance, in Parliament.*

Supply of Parliamentary publications

Money Resolutions

Select Committee Reports

Membership of Select Committee/ All Party Parliamentary Groups

4. Ministers and their Departments

Changes in Ministerial responsibilities

33. *The Prime Minister is responsible for the overall organisation of the Executive and the allocation of functions between Ministers in charge of Departments. His approval should therefore be sought where changes are proposed that affect this allocation and the responsibilities for the discharge of Ministerial functions. This applies whether the functions in question are derived from statute or from the exercise of the Royal prerogative, or are general administrative responsibilities.*

Ministers outside the Cabinet

40. *The Minister in charge of a Department is alone answerable to Parliament for the exercise of the powers on which the administration of that Department depends*

Arrangements during absence from London

Parliamentary Private Secretaries

Special Advisers

50. *The employment of Special Advisers on the one hand adds a political dimension to the advice available to Ministers, and on the other provides Ministers with the direct advice of distinguished "experts" in their professional field, while reinforcing the political impartiality of the permanent Civil Service by distinguishing the source of political advice and support. With the exception of the Prime Minister, Cabinet Ministers may each appoint up to two Special Advisers. The Prime Minister may also authorise the appointment of one or two Special Advisers by Ministers who regularly attend Cabinet. The Government expects the appointment of experts normally to be made to permanent or temporary Civil Service posts in accordance with the rules of the Civil Service Commissioners. Where, however, an individual has outstanding skills or experience of a non-political kind which a Minister wishes to have available while in a particular post, the Prime Minister may exceptionally permit their appointment as a special expert adviser above the usual limit of two advisers per Cabinet Minister. All appointments require the prior written approval of the Prime Minister, and no*

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commitments to make such appointments should be entered into in the absence of such approval. Any departures from the rule of two Special Advisers per Cabinet Minister will need to be explained publicly. All such appointments should be made, and all Special Advisers should operate, in accordance with the terms and conditions of the Model Contract for Special Advisers and the Code of Conduct for Special Advisers.

Unpaid advisers

51. The appointment of an unpaid adviser is to provide advice to a Minister in their ministerial capacity. Such appointments are exceptional, and the prior written approval of the Prime Minister should be sought for any such appointment before a commitment is entered into. These appointments carry no remuneration or reimbursement from public funds. The appointment of an unpaid adviser is a personal appointment by the Minister concerned and there is no contractual relationship between such an adviser and the Department. In making an appointment Ministers must ensure that there is no conflict of interest between the matters on which the unpaid adviser will be advising and their private concerns. A letter of appointment must be issued by the employing Minister making this clear. The letter should indicate the subjects with which an unpaid adviser may (or may not) deal and their access to papers. The normal rules of confidentiality also apply. Unpaid Advisers are subject to the Official Secrets Act and Business Appointment Rules. Aside from the provision of a furnished office, use of a telephone, and access to typing facilities, a personal computer and internal departmental messenger system, an unpaid adviser should constitute no cost to the public purse.

Royal Commissions, Committees of Inquiry Appointments by Ministers

5. Ministers and Civil Servants

58. Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching policy decisions; a duty to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code; a duty to ensure that influence over appointments is not abused for partisan purposes; and a duty to observe the obligations of a good employer with regard to terms and conditions of those who serve them. Civil servants should not be asked to engage in activities likely to call in question their political impartiality, or to give rise to the criticism that people paid from public funds are being used for Party political purposes.

The role of the Accounting Officer

Civil servants and Party Conferences

62. Ministers should not ask civil servants to attend, still less take part in, Party Conferences or meetings of policy or subject groups of any of the Parliamentary parties. Nor should civil servants in their official capacity accept invitations to conferences convened by, or under the aegis of, party political organisations except when their presence is required for carrying through essential Departmental business unconnected with the conference. An exception to this rule is made for Special Advisers who, under the terms of their contracts, may attend Party functions, including the annual Party conference (but they may not speak publicly at the conference) and maintain contact with Party members. If a Minister wishes to have a factual brief for a party political occasion to explain Departmental policies or actions, there is no reason why this should not be provided.

Contacts with outside interest groups, including Lobbyists

63. Ministers receive deputations from many outside interest groups which Ministers will wish to consider as part of the formulation of Government policy. The basic facts of formal meetings between Ministers and outside interest groups should be recorded, setting out the reasons for the meeting, and the names of those attending and the interests represented.

6. Ministers' Constituency and Party Interests

64. It is wrong in principle for Ministers to use for Party or constituency work facilities provided at Government expense to enable them to carry out their official duties. This point of principle is reflected in the entitlement of Ministers to a Parliamentary salary in recognition of the time spent in attending to the interests of their constituents, and to the reimbursement of their secretarial expenses and the expenses of living away from home when attending to constituency business, within the limits prescribed by the relevant Resolutions of the House of Commons. Ministers should thus have their constituency work done at their own expense, as they would if they were private Members of Parliament.

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65. Government property should not generally be used for constituency work or party activities. A particular exception is recognised in the case of Nos. 10 and 11 Downing Street, Carlton House Terrace and other official residences where senior Ministers are required to live for the purposes of the job. Where Ministers host Party events in these residences or other Government property, it should be at their own or Party expense with no cost falling to the public purse.

Parliamentary Commissioner for Administration cases

Deputations

Lottery Bids

7. Ministers' Visits

Ministers' visits overseas

72. Overseas visits should not normally be made while Parliament is in session. Ministers should arrange such visits only in the Recess or, where appropriate, at weekends, except where the visit is in connection with the business of the European Union (EU) or there are other compelling reasons of Government business. In particular, overseas visits which are largely of a fact-finding kind should be reserved for the Parliamentary Recess. Moreover, in planning overseas visits Ministers should take account of paragraph 6 above, ie that Cabinet meetings take precedence over all other business (other than meetings of the Privy Council). Sufficient Ministers must also be available during Recesses to ensure effective conduct of Government business, and it may be necessary for this reason to restrict or reconsider absences abroad.

Relations with other governments

Visits by Commonwealth or foreign Ministers

Entertainment overseas

Ministers recalled from abroad

Ministers' visits in the United Kingdom

Expenses on travel and hospitality

84. In using official cars and travelling by rail or air, Ministers must always make efficient and cost-effective travel arrangements. Detailed guidance is set out in *Travel by Ministers*. When Ministers travel on official business, their travel expenses should normally be borne by the Departmental Vote. When any expenses are not met in this way, Ministers will wish to ensure that no undue obligation is involved.

85. Accepting offers of free travel can be misinterpreted. However, an offer to a Minister on official business to accompany a representative of a host foreign government may be acceptable, provided it creates no undue obligation, and if it offers a saving of official time or provides an opportunity to conduct official business. Offers of transport from other organisations should not normally be accepted, except where provided as an integral part of a tour of inspection. In exceptional cases such an offer may be accepted if this would represent a saving of official time and there is no risk of an undue obligation being created. In these cases, if the journey is of any significant distance, the organisation concerned should be reimbursed from the public purse to the value of a scheduled business class ticket. In any cases of doubt, the Prime Minister should be consulted.

Air Miles

Travelling expenses of spouses/ partners

87. The expense of a Minister's spouse/partner when accompanying the Minister on the latter's official duties may occasionally be paid from public funds, provided that it is clearly in the public interest that he or she should accompany the Minister. In the case of official visits overseas, the Prime Minister's prior assent should be obtained on each occasion.

Travelling expenses of Special Advisers

Offers of hospitality, gifts, etc.

89. Detailed rules on the acceptance of gifts, services and hospitality can be found at paragraphs 136-139. While these paragraphs make clear that no Minister or member of their family should accept a gift from anyone which would, or might appear to, place him or her under an obligation (see paragraph 136), there may be difficulty in refusing a gift from another government (or governmental organisation) without the risk of apparent discourtesy.

Foreign decorations

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8. Ministers and the Presentation of Policy

Co-ordination of Government Policy

91. *Official facilities financed out of public funds can be used for Government publicity and advertising, but may not be used for the dissemination of material which is essentially party political. The conventions governing the work of the Government Information Service are set out in Guidance on the Work of the Government Information and Communication Service.*

Press conferences

93. *In order to explain policies or to announce new policies a Minister may decide to hold a press conference. This will be convened by the Chief Information Officer of the Department. All press conferences are on the record and open to any representative of the home and overseas media..*

Publication of White and Green Papers

94. *Before publishing a White or Green Paper, Departments should consider whether it raises issues which require full collective Ministerial consideration, and, after consulting the Cabinet Office as necessary, seek clearance through the appropriate Cabinet Committee. Any Command Paper containing a major statement of Government policy should be circulated to the Cabinet before publication..*

Speeches

97. *Ministers cannot speak on public affairs for themselves alone. In all cases other than those described in paragraph 69 they speak as Ministers; and the principle of collective responsibility applies.*

Broadcasts

Press articles

Books

107. *Ministers may not, while in office, write and publish a book on their Ministerial experience. Nor, while serving as a Minister, may they enter into any agreement to publish their memoirs on leaving their Ministerial position, without the agreement of the Prime Minister. Former Ministers are required to submit their manuscript to the Secretary of the Cabinet and to conform to the principles set out in the Radcliffe Report of 1976 (Cmnd 6386) (see paragraphs 18 and 19 above). Ministers may not receive payment for a book written before becoming a Minister if the decision to publish was taken afterwards.*

Party and other publications

108. *The rule in paragraph 105 does not debar Ministers from contributing to the publications of the political organisations with which they are associated.*

Complaints

Royal Commissions

9. Ministers' Private Interests

General principle

113. *Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests, financial or otherwise.*

Responsibility for avoiding a conflict

114. *It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, and to defend that decision, if necessary by accounting for it in Parliament.*

Procedure

115. *On appointment to each new office Ministers are advised to provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict.*

Public appointments

120. *When they take up office Ministers should give up any other public appointment they may hold. Where it is proposed that such an appointment should be retained, the Prime Minister must be consulted.*

Non-public bodies

Trade unions

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Financial interests

123. Ministers must scrupulously avoid any danger of an actual or apparent conflict of interest between their Ministerial position and their private financial interests. In order to avoid such a danger, they should be guided by the general principle that they should either dispose of any financial interest giving rise to the actual or apparent conflict or take alternative steps to prevent it.

124. Two particular ways in which a conflict of financial interest, or the perception of it, can arise are as follows:

- a. from the exercise of powers or other influence in a way that does or could be considered to affect the value of interests held; or
- b. from using special knowledge acquired in the course of their Ministerial activities in ways which bring benefit or avoid loss (or could arouse reasonable suspicion of this) in relation to their private financial interests.

125. Apart from the risk to the Minister's reputation, two legal obligations must be born in mind:

- a. any exercise or non-exercise by a Minister (including a Law Officer) of a legal power or discretion or other influence on a matter in which the Minister has a pecuniary interest could be challenged in the courts and, if the challenge is upheld, could be declared invalid. The courts interpret conflict of interest increasingly tightly;
- b. Ministers are bound by the provisions of Part V of the Criminal Justice Act 1993 in relation to the use or transmission of unpublished price-sensitive information obtained by virtue of their Ministerial office.

Financial interests: alternatives to disposal

Steps to be taken where financial interests are retained

Partnerships

Directorships

Membership of Lloyd's

Nomination for prizes and awards

Acceptance of gifts and hospitality

136. It is a well established and recognised rule that no Minister or public servant should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc are offered to a member of their family.

Acceptance of appointments after leaving ministerial office

10. Ministerial Pensions

Participation in the Parliamentary Contributory Pension Fund

Participation in other pension schemes

.....

The code makes it clear that ministers owe their duty to the Prime Minister who is alone responsible for dismissing a minister for misconduct. If the Prime Minister breaches the code then presumably the Prime Minister is responsible for his/her own conscience but otherwise, it will only be accountable to Parliament on a motion of censure. However, a Prime Minister will also be accountable to his party.

Responsibility for personal behaviour.

The theory is that, if a minister does something in his private life, which is socially unacceptable, this may indicate that he is no longer fit to hold office. Clearly, a scandal will reflect badly on the integrity of the party that he represents. The party may well be better off distancing itself from the minister.

Some behaviour may indicate that the minister is open to blackmail, e.g. homosexual conduct and this would indicate that he is not to be trusted with national security.

Sometimes, it will be clear that the minister is blameworthy, e.g. in matters in their private lives, e.g. Lord Jellicoe and Mr Lampton consorted with prostitutes, which made them by the standards of their day, unfit to be ministers. In the Profumo Scandal in 1963, Mr. Profumo lied to Parliament about his conduct. He had been having relationships with two girls who were also in consort with a member of the diplomatic staff at the Soviet Embassy. Since Profumo was the Minister for War and the period was one of Cold War one might have thought that there was a security problem here. Even so, Denning, who was given the task of investigating the matter decided that there was not.

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Individual Ministerial Responsibility to Parliament

What are the mechanisms by which an individual minister becomes responsible to Parliament and what can Parliament do about it?

- 1). Parliament might wish to act, but the person involved resigns: end of problem.
- 2). However, if Parliament is unhappy with the conduct of a minister but he refuses to resign then a motion to lower the salary of, or remove the salary of the minister may be moved.
 - a) If the government of the day wishes to retain the services of the minister, it can rely on voting along party lines, with the result that the censorship motion fails.
 - b) A successful censorship is bad publicity for the government. It would not affect his salary- a statute would be needed for that.
 - c) There are both short term and long-term political costs for the individual and the party.
 - d) To remove a minister at the time of the incident is an admission by the government that the minister has made a mistake.
 - e) The best measure of the Prime Minister's opinion of a minister is often seen in later cabinet reshuffles where a problem minister may be removed from office.
- 3) The Minister is '**ANSWERABLE**' to Parliament. This means that M.P.s can ask questions regarding the minister's sphere of activity by posing awkward questions.

Ministers have devices for avoiding questions they do not care to answer. They include day-to-day administration; foreign affairs; national security; sub-judice; i.e. cannot be politically commented on; or a prudent or evasive answer can be given – in modern parlance they may be "*economic with the truth.*"

Function and Purpose of Individual Ministerial Responsibility

Why do we have a doctrine of individual responsibility in the constitution?

- 1) It is wise to have rules as to whom to blame regarding the private conduct of ministers and regarding policy decisions.
- 2) The mechanism not only blames but also provides penalties thus forcing ministers and the government to maintain high standards. Are these penalties effective though?
- 3) By making ministers responsible it is possible to preserve the impartiality and anonymity of civil servants.

Thus civil servants are able to carry out their work free of political criticism. This helps to preserve the civil service as an ongoing feature of the constitution serving successive governments. The civil service must serve the government of the day faithfully without fear or favour. Government policy should not be attributed to civil servants lest a succeeding government would not trust those civil servants to carry out their policies. Likewise, a succeeding government cannot attribute blame to the civil service for carrying out the policies of a preceding government.

Civil servants choose a career for life and cannot afford to lose office when the government changes. The politician places his trust in, and his career in, the hands of the electorate, the civil servant does not.

This shield of anonymity has however started to break down in recent times. Select committees of the House of Commons and the activities of the Parliamentary Ombudsman have started to name and blame civil servants.

It is inaccurate to attribute all policy to the government. A ministry will develop long-term plans for the rationalisation of ministry business, which may well spread over several terms of political office. The civil service has all the information at its finger tips and can use this to carry out policies, perhaps informing the minister of the day of the policy in such a way that he cannot refuse permission, or even not bothering to tell the minister unless directly challenged on the issue. A minister may find himself being blamed for something he knew nothing about - and which only assiduous questioning at the ministry would have revealed. A minister needs to hold a post for sufficient time to be able to get on top of the job. Civil servants may report direct to, and receive instructions from the Prime Minister, circumventing Ministerial control. A Prime Minister who indulges in frequent cabinet changes and reshuffles can render a minister powerless.

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Does an errant minister have to resign?

Professor Finer claims that the sanction is irregular and unpredictable to the extent that there can be no rule that an errant minister must resign. Resignation depends rather on the attitude of the Prime Minister, the character of the minister concerned, the mood of the party, the tone of the opposition and the vigour of an attack by the press. The '*fortunate*' go to another ministry, directly through a cabinet reshuffle or some time later e.g. Cecil Parkinson, the '*less fortunate*' may go to another place (The House of Lords) or to the backbenches. Some will leave Parliament- their fate often being an attractive one, leading to a plum job which does not fit in well with an idea of paying for one's sins.

On times a minister will not be supported by the Prime Minister but rather will be used as a scape-goat to divert attention from other problems that the government has. Edwina Currie is a prime example over the salmonella in eggs scandal.

Even when a minister is forced to resign, a suitable period on the back-benches for the public to forget can enable a minister to be redeemed – and for their career to be revived. Cecil Parkinson and Peter Mandelson both returned to office in relatively short periods of time.

Peter Mandelson, despite being forced out of office twice has now become a British nominated European Commissioner.

Some Resignations for Individual Responsibility

- Thomas (1936) premature release of budget details
- Dalton (1947) premature release of budget details
- Thomas Doudale. Critchel Down
- Profumo (1963) Lied to the House of Commons over relationship with Christine Keeler.
- Maudling Reginald (1972) over the Poulson investigation
- Lambton and Jellicoe (1973) over a prostitute
- Fairbairn (1982) conduct of a prosecution and problems in his private life
- Parkinson – Cecil affair with secretary
- Brittain (1986) leak of Solicitor General's Letter.
- Mandelson Peter – interest free loan for property
- Mandelson Peter – visa for Hindujah brothers
- Blunkett David – visa scandal for ex-mistress's nanny.

Some Resignations for Incompetence in Office

- Carrington, Atkins and Luce (1982) Falklands
- Morris (Estelle) Education – A Level exam fiasco

Examples of failures accept personal responsibility and accordingly to resign

- Lennox-Boyd (1959) Colonial Secretary re Mau Mau uprising in Kenya
- Whitelaw William (1982) re Fagan intrusion into the Queen's bedroom
- Prior James (1983) Break out from the Maze Prison
- Hoon Geof : Secretary of State for Defence (2004) Hutton Inquiry / David Kelly suicide

Sackings – reshuffles.

These are far too numerous to itemize. The fate of every minister who does not survive until an election is to be reshuffled to a minor office, or returned to the back-benches. This may be because the retiring minister is deemed to be incompetent, ineffective or to have in some other-way tarnished his/her image in the eyes of the electorate and to no longer be an asset. This is in any case necessary in order to make way for new talent.

Furthermore, often a minister will resign for health reasons, or for personal reasons – to spend more time with the family. Whilst the real reason may be some form of wrong-doing, this is often not publicly admitted. The minister departs with praise and thanks from the prime minister for doing an excellent job. It also leaves the way open for a return to office at some later date.

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Members of Parliament

Wrong-doing in personal life is not limited to Ministers of the Crown. Whilst the Conservatives, who because they have taken the moral high-ground on family life are most vulnerable to attacks from the press that lead to adverse political consequences as demonstrated by the recent fate of Boris Johnson for misleading Michael Howard, leader of her majesties opposition, over an extra-marital affair, innumerable politicians have been forced to resign because of socially unacceptable behaviour and or criminal activity over the years. Thus Ron Davies left the House of Commons under a cloud over his behaviour on Clapham Common and subsequently left the Welsh Assembly over the badger watching scandal. Keith Best, conservative MP for Anglesea was convicted of fraudulent declarations in multiple applications for gas shares during the privatisation floatation of the Gas Industry. Geoffrey Archer was convicted of perjury. Years earlier Jeremy Thorpe the leader of the Liberal Party was forced to step down after a fiasco involving his young boyfriend.

Jonathan Aitken, a conservative minister fell foul of duplicity and corruption charges. Neil Hamilton survived allegations of wrong doing in relation to a free weekend in Paris with his wife that was apparently paid for by Al Fayed, which he did not declare to the House. He was however defeated during the election by Martin Bell an independent who gave up broadcasting so fight against sleaze and as a protest against Hamilton's constituency selectors refusal to deselect him, indicating that John Major misjudged the public's mood by declining to over-rule the local selection committee. The problem had been exacerbated by the *cash for questions* row, which involved allegations of money in brown envelopes being passed to conservative MP's to ask questions in the House.

Johnathan Sayeed, a conservative MP has been criticised for using his position as an MP to give House of Commons visitors passes to day-trippers. He is a director of a travel firm. Michael Howard removed the conservative whip from him for 28 days in February 2005.

Extra-marital affairs do not appear to be major issues in many other countries where to the contrary mistresses appear to be the order of the day, if not a badge of honour. Even in the US, President Clinton survived the Lewinski impeachment and various other allegations of inappropriate behaviour. In the US it appears that a public apology is often sufficient – but skeletons in the cupboard can pose serious problems for presidential candidates. Ted Kennedy was less fortunate in respect of the **Chappaquiddick** incident – though this involved dangerous driving whilst intoxicated, failure to report an accident and the death of a young lady.

Nixon however was impeached over the Watergate Scandal for lying to the House over bugging the opposition during the elections, which has a similar resonance to the British experience.

Tony Blair was cleared of wrong-doing by the Hutton Inquiry and by the subsequent Butler Report, but it is clear that if either report had determined that the Prime Minister had lied to or otherwise mislead the House then he would have had to resign. In the circumstances, Butler found that the Prime Minister had acted in good faith, though it did not show the government in a good light in terms of good judgement in the light of the evidence. As a consequence the final judgement will be left to the electorate at the next election, where the Government will be judged not only on the conduct of the war but also on its economic and social record in government.

Some concern has been expressed that the terms of reference for both inquiries were drawn up by the Prime Minister to ensure that embarrassing issues were not canvassed by the inquiries. Furthermore there appears to have been a lack of independence in the way the Chairmen were appointed and that Hutton and Butler were considered to be safe pairs of hands who would not broaden out the scope of the enquiries and delve into contentious matters. The outcome is that both enquiries have been viewed in some quarters as amounting to "*White-washes*" which failed to address all the relevant issues.

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COLLECTIVE MINISTERIAL RESPONSIBILITY

Introduction

According to **Mackintosh**¹⁸ the development of collective responsibility can be closely linked to the development of the modern day Cabinet. It developed in 'fits and starts.'

During the 18th century the Cabinet contained a body of office holders whose relationship was very ill defined. There was no dividing line between matters which individual ministers dealt with, and where ministers should accept collective responsibility.

According to Grey,¹⁹ by the mid-19th century it was widely accepted that ministerial responsibility was the basis for Parliamentary government in Britain.

What is meant by the term Collective responsibility?

Lord Salisbury stated the doctrine of collective responsibility in absolute terms, in 1878:

"For all that passes in Cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues . . . It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet. Who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld and one of the most important principle of parliamentary responsibility established."

Bradley and Ewing suggest that the following points explain the notion of collective responsibility in modern politics:

- *The Prime Minister and other ministers are collectively responsible to Parliament, and to the Commons in particular, for the conduct of national affairs.*
- *When a Prime Minister dies or resigns office, then even if the same party continues in power, all ministerial offices are at the disposal of the new Prime Minister.*
- *Although ministers are individually responsible to Parliament for the conduct of their departments, if the members of the Commons seek to censure an individual minister of his policies, the government generally will rally to his defence. Collective responsibility is a means of defending an incompetent or unpopular minister.*
- *So long as a politician serves as a minister, he shares in the collective responsibility of all ministers in the sense that he may not publicly criticise or dissociate himself from government policy.*
- *As a former Cabinet minister has said, an element of concealment is inherent in the concept of collective responsibility.*
- *The principle of secrecy attaches to communications departments.*
- *Collective decisions of the Cabinet are communicated by or on behalf of the Prime Minister to the sovereign.*

Bradley and Ewing note that it is very difficult to control political behaviour in absolute terms. Cabinet unity cannot always be achieved, especially when ministers hold deeply divided opinions. This was evident during the women's suffrage between 1906 and 1914.²⁰

It is not easy to say what collective responsibility is. Examples of its operation and failure to operate can be given. The general principle is that ministers are collectively responsible for policy. Though in general responsibility is more potent in respect of individual ministers, more so of important ministers, the general rule is that ministers should act with one voice. If a minister disagrees he should resign or at least not speak against the issue (cabinet secrecy). Half-heartedness with regard to policy may be tolerated in practice.

It is difficult to sustain a notion of collective responsibility if important issues are not considered by the cabinet, but decided elsewhere and imposed upon the cabinet. Heseltine asserted that he had not been allowed to minute the Westland affair at any meeting, which if true went against the Convention that important matters of principle could be debated, so as to reach a collective cabinet consensus and responsibility. The paucity of cabinet meetings under the Blair regime indicates that little has changed.

Agreements to differ :

There are several examples of 'agreements to differ' where the convention has been relaxed :-

¹⁸ Mackintosh, British Cabinet, Chapter 2).

¹⁹ Grey, Parliamentary Government, page 4

²⁰ see Wood, Nineteenth Century Britain 1992.

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- 1) 1932: Coalition government: Liberals only agreed to remain in the Government on condition that they could speak out against and vote against tariffs.
- 2) 1975 E.E.C. referendum. Whilst remaining in the E.E.C. became government policy individual members were allowed to speak out against it and to vote against it, in a 'free vote' type situation - normally reserved for matters to which the government is indifferent.
- 3) 1979 direct elections to Europe.

What is the purpose of the doctrine of Collective Responsibility ?

1. To have a united front with respect to policy which allows the electorate, the opposition and the press to know what the government stands for, ie government policy, to make judgements easier and gives the appearance of party strength.
2. It is intended to continue after the government leaves office. This part of the convention is weak. There has been a growing practice of memoirs being published : Barbara Castle : Richard Crossman : Harold Wilson - each giving accounts of disagreements. Thatcher followed this example as did a number of her ministers such as Pym, Prior, Gilmour and Clark.

If a minister feels that he must disagree with the actions of the government then he should resign and in fact if he does not then eventually he may be dismissed. In a minister's resignation speech he can state the nature and the reasons of the disagreement.

The resignation speech of Geoffrey Howe was extremely damaging to the Prime Minister and provided the opportunity for Heseltine to make a challenge for the leadership, which if it has achieved nothing else resulted in the resignation of the Prime Minister. Howe's resignation was probably the final straw following a long series of events which had indicated that the Prime Minister had not been taking account of the views of the cabinet. Few resignations in the past have had the same impact as Howe's resignation.

Cabinet Responsibility under Thatcher

The Thatcher administration placed a great deal of strain on the concept of Cabinet Responsibility for policy decisions. Mrs Thatcher was one of the strongest personalities to have held the office of Prime Minister in modern times. She appears to have held extremely strong beliefs and a commitment to carry out policies that she believed were right. At one stage the 'Iron Lady's' call sign was 'This lady's not for turning'. To deflect her from her intended purpose has not been an easy task, which does not mean it was impossible to do so.

Lord Whitelaw opined that : *"I am asked if Margaret Thatcher ever listens to points of view other than her own I think she probably enjoys an argument more than most people, and the more vigorous it is the better, as far as she is concerned she can certainly be swayed and influenced by good arguments in the final event ... no one could have presided over such a successful team as Leader unless they had been prepared to take account of internal discussions ... she is certainly the type of chairman who leads from the front and from the start of a discussion makes no secret of her own feelings and views"*²¹

Cabinet Secrecy

Whilst resignation speeches go against the grain of collective responsibility and cabinet secrecy in that they expose disagreements in cabinet to the public gaze, they provide a permitted exception to the rule that ministers must not disclose the goings on within cabinet. If fully enforced the public would have to wait 30 years for the publication of cabinet papers to get any insight into the working of a cabinet, by which time it would be too late for such revelations to have any political impact whatsoever. How important is the convention of cabinet secrecy and can it be enforced?

The **A.G. v Johnathan Cape Ltd** and **A.G. v Times Newspapers Ltd.**,²² concerned the Crossman diaries. Crossman had held several ministerial offices in a number of Labour Administrations. His diaries included several accounts of disagreements within those cabinets. The court had to decide whether to allow publication or not. The permission of the sovereign has to be obtained before publication of cabinet proceedings. The convention that the sovereign's consent should be based on the wishes of the government of the day meant that the publication was a government issue.

²¹ The Whitelaw Memoirs.

²² **A.G. v Johnathan Cape Ltd** [1966] and **A.G. v Times Newspapers Ltd** [1996].

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The judgement disclosed judicial aware of the national interest in encouraging full and frank discussions during cabinet meetings. Ministers would be reticent to speak out if they knew that their opinions would be published. If the court was to reject this aspect of public policy then they needed to find a balancing argument. The Attorney General did not rely either on Crossman's oath as a Privy councillor nor on the Official Secrets Act. The sole issue was that of ministerial responsibility and collective responsibility. The court decided that other issues of Public Policy were involved.

- 1) In a democracy information on the practice of government should be available to the populace.
- 2) The court saw the time interval between the matters involved and described in the book and the newspaper and the date intended for publication was sufficient to ensure that there would be no untoward consequences of disclosure.

The publishing of memoirs have now become normal practice - viz. Wilson, Callaghan, Thatcher etc.

It may be that resignation for breach depends upon the status of the minister, whether in or out of cabinet and whether senior or junior minister. It may not be a resigning matter for a junior minister who disagrees with a policy, which he was unaware of.

In the Attlee post World War II administration, the government chief whip in the House of Lords described the government's handling of a dock labour dispute as crazy and was dismissed. A parliamentary secretary to the Minister of Agriculture did not survive his public criticism of the government's feather bedding of farmers. It is easier to punish minor players than big political hitters. De Smith considered these dismissals to be mere examples of the style of the particular prime minister.

Whilst ministers are expected to be loyal to their colleagues, they expect to receive reciprocal loyalty i.e. not to be subject to individual criticism for implementing cabinet policy. However, in 1935, the Foreign Secretary, Hoare, exceeding his authority, by concurring in an agreement which would have given to the Italian invaders of Abyssinia a part of that country. The government initially decided to stand by him. When the agreement was published, there was a national outcry. The government needed a sacrificial lamb, and the government insisted on the Foreign Secretary's resignation. This was clearly a breach of convention. Hoare was not in disgrace for very long and a few months later he was given another cabinet post.

Whilst theoretically at least, protection from individual responsibility for cabinet policy is implicit in the concept of collective cabinet responsibility, in reality, it requires the government to admit fault. This may in turn result in a vote of no confidence in the government and may bring that government down. If it is possible for the cabinet to deflect criticism from itself and to place blame on an individual minister who can then be forced to resign, the government may survive the crisis. A minister may accept to take the blame in the wider interests of the party and the country and be subsequently rewarded by an early return to office.

Edwina Currie, a junior health minister, appears to have been doing little more than her job, though perhaps in an un-diplomatic manner. Currie had made herself unpopular by suggesting old people should wear more woollies to keep warm and the poor could always eat fish and chips to make their money go further. Her warnings on salmonella in eggs appears in hindsight to have been correct and fully supported by the Government's Chief medical adviser at the Ministry of Agriculture - yet she had to resign to divert responsibility from the government. Probably the biggest cause of panic over the matter was the press and the opposition who blew the whole affair out of proportion. 'Mad cow' disease provoked a similar (though undoubtedly justified) press hysteria but nobody was forced to resign. Politically however the Minister of Agriculture did himself no favours by assuring the public that British beef was safe, and by being picture in the press giving his small son a beef burgher. Labour similarly suffered a major embarrassment over its handling of a foot and mouth epidemic. No-one resigned though it would appear that the problem was badly handled. The Dutch successfully inoculated and contained the disease with minimal disruption to its industry, whereas for the second time in as many years, there was wholesale slaughter of British herds.

It would appear that the Ministry of Health learnt little from these problems about good management and effective health control. The Salmonella incident should have resulted in effective measures being introduced that could have prevented the BSE.

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RECENT PRIME MINISTERS

As outlined above amongst other factors, the personality of a Prime Minister; the experience and standing of the other ministers in a cabinet; the state of the U.K. and world economies; the size of a government's majority in the House of Commons, all contribute to the way a Prime Minister conducts affairs of state and the relationship between a Prime Minister and his or her cabinet. Many of these factors are demonstrated in the following brief descriptions of the administrations of recent Prime Ministers. The political success or failure of these administrations does not concern students of the constitution. The central issues are who makes policy decisions and to what extent, if at all, these policies are created and implemented on behalf of the people.

JAMES CALLAGHAN - 1976-1979.

Callaghan had a strong trade union background. He was very much a party man and received a secondary modern education. He had wide experience in the Home Office, the Foreign Office and as Chancellor of the Exchequer. Callaghan won his Prime Ministerial Office as a result of a compromise when Harold Wilson retired.

Callaghan had parliamentary majority problems. He was plagued by the Lib/Lab pact which relied on support by the Welsh and Scottish Nationalists and Northern Ireland M.P.s. His social legislation was not therefore possible. He found himself controlled by the left wing of the party and the trade unions. Callaghan had problems with Cabinet appointments. Roy Jenkins was prevented from being Foreign Secretary and eventually left the party to become one of the four founder members of the Social Democratic party. Callaghan repayed favours with office. He concentrated mainly on the areas of foreign affairs and economic planning. His style in cabinet was amiable, allowing discussion. He achieved unity in Cabinet which was rare for Labour.

Callaghan chose the election date badly in 1979. 1978 would have been a better since inflation was lower. There was little point in hanging on. He suffered badly as a result of the "Winter of Discontent". When his policy of voluntary wage restraint failed he imposed a 5% wage limit. This was followed by industrial action. Callaghan however was the architect of government policy and relied on his own judgement rather than collective cabinet decisions. He claims to have worked on gut instinct.

MARGARET THATCHER 1979 - 27-11-1990

Mrs Thatcher was relatively inexperienced when she attained office having served in one post only, namely as Minister for Education. Strongly anti-establishment in her views, she was a minority figure in Edward Heath's opposition cabinet and was opposed by Heath's supporters. Thatcher managed to secure leadership of the party from Edward Heath whilst the party was still in opposition. She won by default, in that she was the only person prepared to stand against Heath.

Thatcher was well supported by Conservative back benchers who blamed Heath for putting them in opposition and managed to retain a large degree of back bench support for much of the time that she was in office. By 1979 the country saw the Tories as a clear alternative to Labour. Mrs Thatcher won a clear majority in the House of Commons. Thatcher took office during a very difficult financial period for the U.K. and had to contend with a number of back bench revolts over the implementation of her monetarist policies. The fact that Thatcher's Government commanded a solid majority in the House actually encouraged minor revolts since even if some back benchers defied the Party Whip in divisions they were not likely to topple the Government. Thatcher rarely achieved cabinet unity, especially in her early cabinets, which were a mixture of "Wets" and "Right Wingers".

Thatcher was and indeed continues to be a prolific interviewer. She was alternatively highly popular and unpopular, sometimes at the same time. She successfully garnered the support of the South of England, which enabled her to remain in office for such a long period of time. Scotland by contrast appears to have long since totally rejected Tory rule. Thatcher's term of office was the longest of any 20th century UK Prime Minister and broke the see-saw trend of modern British Politics.

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Thatcher made a concerted effort to replace Keynesian economic policies with Monetarism. She abolished pre-existing corporate financial policies. The Tories believed that high wages and inflexible work practices were the cause of the U.K.'s economic woes in the 1970's. She set out to reduce the power of trade unions. She purported to be a proponent of laissez faire government. A central plank of her policy included Privatisation of public utilities. However, she also strengthened the power of central government a great deal, moving power towards the centre and away from local authorities. She believed that Labour controlled local authorities threatened to frustrate her economic strategy.

Thatcher's relationships with cabinet : At the outset, in 1976 whilst in opposition, she chose Heath's men. She needed experienced personnel and needed to build a power base. In 1979 as Prime Minister she started off with 18 Heath Men out of the previous 22. Dissent and leaks followed in 1980 and saw opposition by Heath and MacMillan. She avoided cabinet discussion and used sub-committees on economic policy to present the cabinet with a series of "fait accompli".

Thatcher has been regarded as more than primus inter pares. She gradually replaced the "Wets" including St. John Stevan, Carlisle, Gilmore, Soames, Prior and Pim and replaced them with the likes of Heseltine and Carrington, though even they did not manage to survive till the end of her administration. The cabinet acted as a brake on her get tough economic policies in 1982. Mrs Thatcher provoked dissent in order to make the "Wets" appear disloyal. She was then able to appeal to the rank and file in the party for support against the "Wets". She constantly moved ministers around as a deliberate ploy to make them feel weak and insecure. Her relationships with her cabinet colleagues has been likened to that of a dominating school mistress.

Thatcher and the Civil Service : She interfered with the government / civil service relationship, making the most systematic assault on the service of any recent government, reaching its innermost citadels. She was active in vetting appointments especially where economic policy might be affected. Between 1981 - 83 over half of the appointments had been vacated and replaced.

Defeats in the Lords and Commons : In 1981 the increase in fuel duties was defeated after rebellions in the ranks. She made a U Turn in relation to Rhodesia and on immigration despite the fact that she had once declared that 'this lady is not for turning'.

It appeared by 1981 that she was an unpopular Prime Minister. Her Spring 1981 economic policy was seen in a bad light leading to riots. The Falkland's Factor established her personal leadership style and the concept of a 'Strong Prime Minister' and a 'Strong Government' image. She relied heavily on Carrington for foreign affairs regarding Rhodesia and Northern Ireland though she became personally involved in the Granada Invasion by the U.S. On the back of the Falkland Islands' affair and due to the general weakness of the opposition she won the 1983 elections.

The 1987 election saw her returned again though with a smaller majority. The Labour party under Neil Kinnock failed to present itself as a viable alternative. Labour's defence policy was weak and Kinnock had no new economic policies. He attempted to revamp previous policies which had already been tried before and had been seen to fail. The press appeared to have prepared the ground for a change of government and the opinion polls had predicted a Labour win.

It would appear that the Thatcher Government was deeply unpopular at the end of the decade. Whilst some members hoped that developments in the Middle East would give Mrs Thatcher the opportunity to create another 'Falkland's style factor' and revitalise the Tories fading popularity political events over took her. The Conservatives were and indeed still remain divided over European Policy. Thatcher's refusal to join the European Monetary System provoked a power struggle which she lost. The Poll Tax proved to be deeply unpopular and was very badly handled when it was introduced. It appeared at that time that there was little left to Privatised. The unions were no longer perceived of as posing a serious threat. Some conservatives believed that Thatcherism had achieved its goals and that she had outlived her usefulness in the eyes of the public.

Self preservation rather than a belief in the E.M.S. was quite possibly the ultimate cause of her down fall. Her unpopularity seems to have stemmed from a perceived failure of her economic policy at that

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time; a temporary pro-European factor coupled with a lack of general interest in 'Sovereignty' which she was preoccupied with and a general feeling that she has turned into a dictator who did not govern through her cabinet. The conservatives have traditionally emphasised the importance of National Security. The apparent demise of communism in Eastern Europe did much to lessen the importance of National Security in the eyes of the electorate and thus of the importance of returning a Conservative government. Her unpopularity in the country no doubt prompted many to support first Heseltine and subsequently John Major in the belief that if she remained in power the Conservatives would lose the 1992 election.

JOHN MAJOR 1990-1997

Despite successfully leading the country through the Gulf War, Mr Major was been portrayed as a grey uninspiring Prime Minister leading a weak government, bereft of new ideas and stigmatised by successive scandals. The manner in which the U.S. ended the Gulf War meant that the Conservatives did not get the type of political upturn out of the relief of Kuwait that Mrs Thatcher got from the Falklands Crisis. Whilst the U.K. was been a major participator in the Bosnian Crisis there was little to no political return on the venture for the Major Administration.

The end of the 1980's boom, the collapse of the property market and the end of the era of the "YUPPIE" placed Major in power at a time when the economy was weak. There was been a distinct lack of the '*feel good factor*' in Great Britain. The extra-ordinary tenacity of the German Mark and economic stagnation in mainland Europe did not help. There was little consensus as to whether or not the Monetarist Policies of Thatcher, which Major had inherited, were a principal cause of the U.K.'s economic woes. It was not even clear whether the U.K. had an economic problem or not. Clearly, Monetarism had resulted in job losses for many citizens and even those with jobs often felt under pressure and feared losing their livelihoods. The Government was widely blamed for creating this situation. Some economists however claimed that the changing nature of world business demanded flexibility. They asserted that low wages and flexible work practices were necessary for the U.K. to compete in the world market. For them, whilst Monetarism produces anxiety over job security it safeguards the U.K.'s prosperity. Major was forced to adopt the message of "*steady as she goes*" and had little scope to pursue a radical program of "new ideas". The administration was forced into a defensive stance.

In the run up to the 1997 election Major was reduced to warning of the constitutional and economic dangers the Tories believed to be inherent in the policies of New Labour, in particular regarding Constitutional changes in Scotland, Wales and to the House of Lords and the adoption of the Social Chapter and the possibility of further European integration. Major was seen as being non-committal to Europe and lacking decisiveness and vision. Major's policies on education and on controlling the social budget were not particularly successful. Several privatisation policies such as the Post Office foundered, or were in trouble, as epitomised by the railway floatation.

The Conservatives basic message was "*Trust Us*". It was a difficult message to convey since public scandals plagued the Major's administration. The outcome of the Nolan and Scott Inquiries caused further damage to its reputation. The staggering incompetence of the Government over the Mad Cow Disease affair also damaged the credibility of the Major Administration both at home and in Europe. Trust was in short supply.

The Conservative majority at the start of the administration was relatively small and a succession of bye-election defeats and a number of defections practically decimated that majority. In the final months of the administration Major could not afford to pursue policies opposed by the Ulster Unionists or by any of his own back benchers. Essentially the administration was simply holding on to power in the hope of an up turn in the economy and a return of the feel good factor.

In terms of management style Major had to strive hard to hold the warring factions in his party together. As a leader he had to be a conciliator. In the circumstances he could not seek consensus within his party since there had been none in respect of the European issue ever since he gained office. As a personality there was something of Edward Heath in his mannerisms. He was a

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pragmatist, attracted to what he believed was possible in any given situation and he had great patience to argue his views. He appeared to believe that he could achieve his objectives through diplomacy. As the break down in the Northern Ireland peace settlement demonstrated, this can only work if others are able and willing to reach a compromise. The Referendum Party sponsored and led by the late Sir James Goldsmith split the Conservative vote at the 1997 election by offering an alternative candidate for Euro-Sceptic voters disenchanted with the Conservatives.

As the Labour Party has gradually occupied the centre ground of British Politics under Tony Blair's leadership, Tory right wingers tried to force Major to adopt a more anti-European stance. Even if Major wished to do so he was severely constrained by the fact that he had to deal with the other European leaders at Inter-Governmental Conferences. He had no mandate to withdraw from Europe and claimed that he wanted the U.K. to remain in the European Community. He appeared to oppose the creation of a Single Currency but wished to keep his options on the issue open. He claimed to be adamantly opposed to the creation of a Federal Europe. He claimed that the U.K. had to take part in the talks that prepared the way for a Single Currency to ensure that the terms and conditions of its creation were amenable to the U.K.

Ultimately, the Conservatives under Major suffered the largest defeat of any government in the 20th Century. He was unable to repeat the electoral successes of 1992 despite the fact that under his stewardship he brought the economy under control and successfully recovered from Black Wednesday. Perhaps the conservative's economic successes were also their downfall, since the country no longer feared the power of the Unions and so the conservatives were no longer needed.

TONY BLAIR 1997 – PRESENT TIME

Under Tony Blair, Labour found a new leader who understood how to use the media, and having reshaped New Labour into a party that persuaded the public that it did not threaten the interests of Middle-England, he entered into government under the banner's of *Education, Education, Education* and *Things Can Only Get Better*. Tony Blair appears to be a powerful Prime Minister who has stamped the authority of Milburn House on his administration. With a massive majority in the House he has not had to concern himself with any threats from the opposition. He managed to hold on to this majority in 2001. His control over New Labour has been remarkable though cracks have appeared over the Iraq War. He has sidelined both cabinet and Parliament, relying on the Labour Party machinery for support and advice. A full evaluation is yet to be written, but as he goes into a third election in 2005, he appears to be confronted with weak opposition and is expected to win again.

The future of Cabinet & Prime-Ministerial Government

Did Cabinet Government reasserted itself under Major after the authoritarian years of Mrs Thatcher?

Has Tony Blair proved to be a consensus Prime Minister or has he been as autocratic as, or even more autocratic than, Thatcher? He claims to be an admirer of Thatcher (of her power though not apparently her Tory policies, many of which he has none the less adopted or assimilated into New Labour policy.) It is often asserted that Blair has virtually dispensed with cabinet government, having convened cabinet less often than any other Prime Minister in modern times.

The constitutional changes introduced by Labour have altered the power of the government and of the Prime Minister considerably. A Scottish Parliament makes it much harder for Westminster to initiate policy regarding Scotland if the Scottish Parliament is of a different persuasion to the Westminster Government. The reformed House of Lords has proved to be no more subservient to the Commons than the House as previously constituted.

In Wales, a permanent Labour majority in the Welsh assembly means that the local Welsh administration might seek to follow a different agenda to Westminster if a Tory Administration is returned in the future.

Further developments in European integration could completely overshadow the importance and significance of the Prime Minister of the United Kingdom, whichever party is in power at Westminster.

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Conclusions.

There is nothing wrong in government reshuffles and sackings. Over a period of time ministers will reveal administrative failings or political feelings that make their departure from the team desirable. *'In politics you can only resign once'* lamented one minister. But you can of course threaten to resign. George Brown threatened to resign once too often. Dick Crossman said that one should never resign except for the reason Ray Gunter gave - that he just could not stand working under Harold Wilson any more. Clare Short is regarded as the Resignation Queen, having threatened to resign perhaps more often than any other minister in living memory, without having to carry the threat out and without the threat being accepted by her leader as a done act. She however carried out her final threat and resigned over Iraq.

Sir Geoffrey Howe came near to resigning when he was shifted from the Foreign Office. After 10 years in two great offices, the small parliamentary improvements of 15 months as leader of the House must have seemed trivial. Thatcher's style of Cabinet government allowed him little influence on policy despite the label of deputy prime minister (as only the 8th person to hold that intermittent office). On Sir Geoffrey Howe's resignation from Thatcher's final administration it was speculated as to whether or not he would have more influence outside the government.

Harold Wilson, like Anthony Eden, came back after resigning to become prime minister. Peter Thorneycroft also managed to regain a cabinet post after an earlier resignation from office. Similarly Heseltine was rewarded with the post of Deputy leader in John Major's administration having earlier resigned from his cabinet post under Thatcher. Aneurin Bevan is the only other person who continued to be a major voice from the back bench. Sir Geoffrey does not seem to have bargained about his resignation or to have sought to bring others with him. He appeared to have acted on the principle cited by Duff Cooper when he resigned after Munich. "It is easier for me to go alone, as I have no wish to injure the government, which I shall not do if my resignation is the only one".

Resignations have only limited electoral consequences. Not since Jimmy Thomas in 1936 has a cabinet resignation caused a by-election and when general elections come there has been no sign of exceptional swings in the seats of resigning ministers. but some celebrated resignations notably those of Thorneycroft, Brown and Heseltine have caused a short-term slump in the government's opinion poll standing. The last minister before Michael Heseltine actually to resign by walking out of a cabinet meeting was Joseph Chamberlain in 1886. He took a third of the Liberal party with him. The issue was Ireland. Europe may be coming to be as divisive an issue as Ireland, but parties are more tightly glued today. Geoffrey Howe was not Joseph Chamberlain.

Problems with the Doctrine of Ministerial Responsibility.

- What is the legal basis for ministerial responsibility or is it reliant solely on political enforcement?
- Does ministerial responsibility shield government from accountability rather than render it accountable?
- Are there any sanctions, which effectively safeguard us from ministerial incompetence?
- How can collective responsibility be effective, when so much secrecy surrounds the cabinet?
- Which is the most important, a responsible government or ministerial responsibility?
- If a minister is held to be 'responsible' (individually or collectively), does that minister have to resign?
- What is the relationship between a civil servant and a government minister?
- Have civil servants become too powerful?
- Is there a duty for civil servants to expose unlawful behaviour by ministers and/or the government?²³
- Despite guidelines, it is still difficult to determine whether a civil servant or a minister is at fault.
- The role of and the power and influence of the civil servant has grown so much in recent times that it is no longer felt justified to hold a minister responsible for the affairs of his department except in the broadest manner.
- Quangos, e.g. Manpower Services Commission are unaccountable to Parliament.
- Does the Ombudsman (PCEW) improve or detract from the accountability of government ministers?

²³ see Sarah Tisdale, Clive Ponting etc on legal controls over whistle-blowing.

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THE EXECUTIVE : READING MATERIAL

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Drewry [1985] Public Law p203 ;
Jowell & Oliver. 1985. Chapter 3 ;
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7th Report of Treasury & Civil Service Committee 1985-86 H.C 92 ;
Constitutional Texts : Rodney Brazier, Chapter 6 p345 ;
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Cases & Materials on Constitutional Law Allen, Thompson & Walsh. Chapter 5. Parliament at work.

EXAM PREPARATION - ESSAY QUESTIONS

Exam question frequently invite an analysis of the effectiveness of the Convention of Ministerial Responsibility to hold individual ministers and the government to account, by requiring individual ministers or the government to resign / submit to a vote of no-confidence. This calls, by drawing on anecdotal evidence of past and present action, for a consideration of:-

Individual Ministerial Responsibility

- a) Responsibility for Policy Decisions – plus the difficulty of separating from shared cabinet responsibility for policy.
- b) Responsibility for incompetence and/or embarrassing the government.
- c) Unfitness for Office due to private misbehaviour. Changing moral attitudes versus criminal / tortious acts.

Impact of support of PM versus scape-goat syndrome.

Role of the Media – sensationalism of trivia or a genuine form of accountability.

Collective Ministerial Responsibility Ingredients :

- a) Solidarity for Cabinet Decisions
- b) Resignation for public dissent

Rationale for Convention – public confidence in the government.

Examination of the political consequences of dissent and leaks and the legal consequences for publishing memoirs.

Extent to which Collective Cabinet Government is a reality or whether or not a Prime Minister may bypass the Cabinet and even the House of Commons.

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THE CIVIL SERVICE

Introduction

The government is the largest employer in the United Kingdom. The government is responsible for a vast range of activities in modern society ranging from security services delivered by the police and the prison service; justice through the courts; accident and emergency care; health; education; town and country planning etc at both the central, regional and local levels through Whitehall, regional assemblies, parliaments and local councils and also through appointed public bodies. Even where the government does not provide services itself it frequently regulates the provision of services.

Major public sector services are administered under the direction of a government minister by government departments. The most important ministers sit in the cabinet. Civil servants carry out the day-to-day work of the government departments. Local authority workers are not civil servants, but National Assembly for Wales and Scottish Parliament staff are civil servants. Ministers work closely with and are guided and assisted by senior civil servants. Appointment to and promotion through the ranks of the civil service is not controlled by politicians but rather by the normal protocols of each department.

Anonymity and independence from politics

The traditional view is that civil servants must serve governments of all political persuasion without fear of favour and as such, whilst the individual may well have personal political views, these personal views should have no impact upon their commitment to the implementation of the policies of their political masters at any given time. Civil servants should be selected and promoted on the basis of merit, not on the basis of their political beliefs. In order to protect the political impartiality of the civil servant, fault and blame should not be publicly placed on civil servants for things that go wrong in a ministry. Thus civil servants should not be named and shamed in the media by politicians and must be protected by a cloak of anonymity. Rather, it is the minister who publicly takes both the blame and the credit for the affairs of the ministry.

This is not to say that an incompetent or corrupt civil servant is without responsibility. A civil servant can be disciplined, demoted and sacked in the same way as an employee in the private sector. Sophisticated disciplinary procedures apply to civil servants and the service operates a complaints procedure that provides staff with high levels of job security. Most public sector employer/employee disputes are amenable to settlement before employment tribunals but since civil servants do not normally have contracts of employment, being engaged at the pleasure of the crown, they cannot sue for breach of contract of employment in the civil courts.

Who governs – ministers of civil servants?

The civil service enjoys permanency and for many the civil service provides a job for life. Career civil servants are likely to become attached to pet projects and hobby-horses and senior civil servants have the opportunity to persuade ministers to adopt, authorise and or implement their projects. Michael Meacher, a junior backbencher in Harold Wilson's administration, wrote a number of articles complaining that the Civil Service Mandarins were the real rulers in the UK and not the government. He explained that because the Civil Service had access to information, the possession of which is a source of power, they could manipulate the ministers to their own agenda. The TV comedy classics, *YES MINISTER* and *YES PRIMEMINISTER* were based on the relationship between senior civil servants and their political masters. Margaret Thatcher expressed the view that the programs were very realistic and provided an insight into how government works.

If this is the case, then the underlying political allegiances of civil servants may have a significant impact upon administration. Whilst the civil service of the first half of the twentieth century was undoubtedly strongly influenced by conservative establishment values, the principal values of the service today appear to be those of the liberal democrat party. Relations between Tony Blair's New Labour administration (which combines selected aspects of socialism, liberalism and conservatism) and the civil service have been strained at times, particularly when the government has bypassed advice given by senior civil servants. John Major established a code of practice to govern the relationship between civil servants and ministers and this has been further developed by Tony Blair's administration.

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Civil Service Code of Practice.²⁴

The Civil Service Code sets out the constitutional framework within which all civil servants work and the values they are expected to uphold. It is modelled on a draft originally put forward by the House of Commons Treasury and Civil Service Select Committee. It came into force on 1 January 1996, and forms part of the terms and conditions of employment of every civil servant. It was revised on 13 May 1999 to take account of devolution to Scotland and Wales. Selected extracts are provided below.

1. *The constitutional and practical role of the Civil Service is, with integrity, honesty, impartiality and objectivity, to assist the duly constituted Government of the United Kingdom whatever their political complexion, in formulating their policies, carrying out decisions and in administering public services for which they are responsible.*
2. *Civil servants are servants of the Crown. Constitutionally, all the Administrations form part of the Crown and owe their loyalty to the Administrations²⁵ in which they serve.*
3. *This Code should be seen in the context of the duties and responsibilities set out for UK Ministers in the Ministerial Code which include:*
 - *accountability to Parliament²⁶ ... ;*
 - *the duty to give Parliament ... and the public as full information as possible about their policies, decisions and actions, and not to deceive or knowingly mislead them;*
 - *the duty not to use public resources for party political purposes, to uphold the political impartiality of the Civil Service, and not to ask civil servants to act in any way which would conflict with the Civil Service Code;*
 - *the duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice, in reaching decisions; and*
 - *the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice;**together with the duty to familiarise themselves with the contents of this Code.*
4. *Civil servants should serve their Administration in accordance with this Code and recognising:*
 - *the accountability of civil servants to the Minister²⁷ or to the office holder in charge of their department;*
 - *the duty of all public officers to discharge public functions reasonably and according to the law;*
 - *the duty to comply with the law, including international law and treaty obligations, and to uphold the administration of justice; and*
 - *ethical standards governing particular professions.*
5. *Civil servants should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to the Minister without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Ministers, Parliament, the National Assembly or the public.*
6. *Civil servants should endeavour to deal with the affairs of the public sympathetically, efficiently, promptly and without bias or maladministration.*
7. *Civil servants should endeavour to ensure the proper, effective and efficient use of public money.*
8. *Civil servants should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity.*

²⁴ http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/civil_service_code.asp

²⁵ In the rest of this Code, we use the term Administration to mean Her Majesty's Government of the United Kingdom, the Scottish Executive or the National Assembly for Wales as appropriate.

²⁶ In the rest of this Code, the term Parliament should be read, as appropriate, to include the Parliament of the United Kingdom and the Scottish Parliament.

²⁷ In the rest of this Code, Ministers encompasses members of Her Majesty's Government or of the Scottish Executive.

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9. *Civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers ... and to be able to establish the same relationship with those whom they may be required to serve in some future Administration. ... The conduct of civil servants should be such that Ministers ... and potential future holders of these positions can be sure that confidence can be freely given, and that the Civil Service will conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the lawful policies of the duly constituted Administrations.*
10. *Civil servants should not without authority disclose official information which has been communicated in confidence within the Administration, or received in confidence from others. Nothing in the Code should be taken as overriding existing statutory or common law obligations to keep confidential, or to disclose, certain information. They should not seek to frustrate or influence the policies, decisions or actions of Ministers ... by the unauthorised, improper or premature disclosure outside the Administration of any information to which they have had access as civil servants.*
11. *Where a civil servant believes he or she is being required to act in a way which:*
 - *is illegal, improper, or unethical;*
 - *is in breach of constitutional convention or a professional code;*
 - *may involve possible maladministration; or*
 - *is otherwise inconsistent with this Code;**he or she should report the matter in accordance with procedures laid down in the appropriate guidance or rules of conduct for their department or Administration.*
12. *Where a civil servant has reported a matter covered in paragraph 11 in accordance with the relevant procedures and believes that the response does not represent a reasonable response ... he may report the matter in writing to the Office of the Civil Service Commissioners.*
13. *Civil servants should not seek to frustrate the policies, decisions or actions of the Administrations by declining to take, or abstaining from, action which flows from decisions by Ministers Where a matter cannot be resolved by the procedures .. he should either carry out his or her instructions, or resign from the Civil Service. Civil servants should continue to observe their duties of confidentiality after they have left Crown employment.*

Civil Service whistle-blowers – conflicts between conscience and duty²⁸

Confidentiality is an important aspect of civil service practice. Civil servants sign the official secrets acts and are subject to the law on disclosure. The **Official Secrets Act 1911** was very restrictive, but today the amount of restricted information is restricted by the **Freedom of Information Act 2000**. Clauses 10-13 deal with the conflict and provide a mechanism for resolving the types of problem encountered by Clive Ponting and Sarah Tisdale in relation to the Belgrano Affair and the US deployment of nuclear missiles in the UK. Clive Ponting was acquitted by a jury of charges of breach of official secrets laws on the basis that he believed his revelations were in the public interest. The mechanism was bypassed by Dr David Kelly who spoke directly to the press, leading to him firstly giving evidence to a House of Commons select committee, his death apparently by suicide and the Hutton Inquiry. The problem lies in that the mandarins are likely to be influenced by the requirements of their political masters and not entirely independent or objective, leaving the whistleblower with no lawful avenue for disclosure.

The Public / Private Sector Divide – Bureaucracy and expert advice.

The public sector differs from the private sector in that it is not government by market forces, profit and loss and open competition. Public sector finance is reliant on government funds, allocated on the basis of political expediency and government policy. Bureaucrats tend to devise policies that build administrative empires with complex precedents for internal operations, emphasising due process and best practice to the detriment of efficiency and productivity.

Civil servants are rarely entrepreneurs who can think outside the box. It is hardly surprising therefore that there are times when a government will seek advice from experts drawn from academia and the private sector to find novel solutions and policies when government policy is perceived to be failing. Harold Wilson sought advice from the Keynesian minded *Think Tank*, headed up by Lord Rothschild. Margaret Thatcher

²⁸ This topic is dealt with in more depth in Chapter 15 below.

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relied heavily on the advice of Bernard Ingham, an economic guru committed to monetarism. Tony Blair has relied heavily on focus groups and on independent Political Policy groups for advice. The budget for commissioned advice today runs into hundreds of millions of pounds.

The government of the day will have allegiance to a political party and will reflect the aims and objectives of that party, established through consultation and party conference proceedings. Non-elected members of the political party should not have a voice or role in government. Outside policy advice is different in that it is novel and not intrinsic to the aims and objectives of the party, which may be diametrically opposed to them. The problem for the government is that it is tasked with delivery of services, whereas the party reflects aspirations, whether practicable or not.

Over the last fifty years government has had to deal with the question of the role, status and accountability of outside advisers who are not subject to the civil service rules and are not accountable to Parliament. Wilson and Thatcher were heavily criticised for relying on outside advice and bypassing the cabinet and the same criticism now attaches to Tony Blair. The issue is central to the assertion that cabinet government has been replaced by Prime Ministerial government. On the basis that information is power, the prime minister and other selected senior ministers, forearmed with such information can formulate policies and present them to cabinet as a "*fait accompli*", effectively preventing discussion in cabinet or even by presenting the policies directly to the House, with or without prior leaks to the press.

A further complication is that in recent times political party activists have been employed as special advisers. Jo Moore of 9/11 "*it's a good day to bury bad news*" fame and Alistair Campbell, the archetypal "*spin doctor*" are classic examples. Alistair Campbell, a Daily Mirror journalist was recruited to head up a communications task force for the Prime Minister and regularly attended cabinet meetings. Campbell's role was resented both by ordinary civil servants and by Labour Party backbenchers because he appeared to wield a great deal of power but was unaccountable to Parliament. Nonetheless he retained the confidence of the Prime Minister and weathered many storms until, having become involved in a battle with the BBC over the Dr David Kelly allegations of "*sexing up*" a key document relied upon by the Government to justify the Iraq war, he resigned from his post. Remarkably, he has now been re-engaged to head up communications in the run up to the 2005 elections as part of the Alun Milburn election strategy team. Arguably the Hutton Inquiry and Butler Report cleared Campbell of any wrongdoing, though it would be hard to conclude that they gave a resounding endorsement of his conduct.

It is of some concern that today presentation is often deemed to be more important than content. Image appears to be all-important in the multi-media age of sound-bites where a short pithy positive twist, supported by selected statistical information, can turn bad news into good news and where old news can be represented as new news. This is all graft to the mill of the experienced spin-doctor who is wont to sneer at any form of criticism and to dismiss it out of hand. It relies upon being economical with the truth rather than telling "*the truth, the whole truth and nothing but the truth*" on the basis that the general public would not pay attention to detailed explanations, playing on apathy about politics and public affairs. Spin is not a new concept. It has always been central to the art of politics, but perhaps today it has been taken to extremely high levels of sophistication.

It is arguably central to the current perceived problem of distrust in government and in politicians. On the one hand there are calls for openness and accountability in government, yet on the other news on the TV is reduced to 30 second clips announcing policy initiatives, preventing any form of detailed disclosure. The attention span of the general public appears to be very short. Despite increasingly large amounts of information on government policy and public affairs being put into the public domain, polls indicate that the general public's levels of awareness and understanding of public affairs is relatively low today. In line with this trend, increasingly, senior government ministers prefer to appear on uncritical popular chat shows rather than on heavy weight political programs that seek to analyse current affairs in depth.

In order to address some of the criticisms highlighted above, a code of conduct has been developed for special advisers who are now treated as a hybrid type of civil servant, paid by the crown. Selected extracts of the code are set out below.

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CODE OF CONDUCT FOR SPECIAL ADVISERS

1. special advisers add a political dimension to the advice available to Ministers, and ... provides Ministers with the direct advice of distinguished experts in their professional field, while reinforcing the political neutrality of the permanent Civil Service by distinguishing the source of political advice and support.
2. Special advisers are employed to help Ministers on matters where the work of Government and the work of the Government Party overlap and it would be inappropriate for permanent civil servants to become involved. They are an additional resource for the Minister providing advice from a standpoint that is more politically committed and politically aware than would be available to a Minister from the Civil Service.
3. The sorts of work a special adviser may do if their Minister wants it are:
 - i) reviewing papers going to the Minister, drawing attention to any aspect which they think has Party political implications, and ensuring that sensitive political points are handled properly. They may give advice on any aspect of departmental business, including giving advice to their Minister when the latter is taking part in Party political activities;
 - ii) "devilling" for the Minister, and checking facts and research findings from a Party political viewpoint;
 - iii) preparing speculative policy papers which can generate long-term policy thinking within the Department, including policies which reflect the political viewpoint of the Minister's Party;
 - iv) contributing to policy planning within the Department, including ideas which extend the existing range of options available to the Minister with a political viewpoint in mind;
 - v) liaising with the Party, to ensure that the Department's own policy reviews and analysis take full advantage of ideas from the Party, and encouraging presentational activities by the Party which contribute to the Government's and Department's objectives;
 - vi) helping to brief Party MPs and officials on issues of Government policy;
 - vii) liaising with outside interest groups including groups with a political allegiance to assist the Minister's access to their contribution;
 - viii) speechwriting and related research, including adding Party political content to material prepared by permanent civil servants;
 - ix) representing the views of their Minister to the media including a Party viewpoint, where they have been authorised by the Minister to do so;
 - x) providing expert advice as a specialist in a particular field;
 - xi) attending Party functions (although they may not speak publicly at the Party Conference) and maintaining contact with Party members;
 - xii) taking part in policy reviews organised by the Party, or officially in conjunction with it, for the purpose of ensuring that those undertaking the review are fully aware of the Government's views and their Minister's thinking and policy.

Status and conduct as temporary civil servants

4. Special advisers are temporary civil servants They are exempt from the general requirement that civil servants should be appointed on merit and behave with political impartiality and objectivity so that they may retain the confidence of future governments of a different political complexion. Their appointment ends at the end of the Administration which appointed them.
5. Special Advisers should conduct themselves with integrity and honesty. They should not deceive or knowingly mislead Parliament or the public. They should not misuse their official position or information acquired in the course of their official duties to further their private interests or the private interests of others. They should not receive benefits of any kind which others might reasonably see as compromising their personal judgement or integrity. They should not without authority disclose official information which has been communicated in confidence in Government or received in confidence from others.
6. Special Advisers should not use official resources for Party political activity. They are employed to serve the objectives of the Government and the Department in which they work. It is this which justifies their being paid from public funds and being able to use public resources They should act in a way which upholds the political impartiality of civil servants and does not conflict with the Civil Service Code.

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7. ... the Prime Minister to appoint up to three special advisers in No.10 who are not subject to the general restriction that their role is to provide advice to a Minister.

Contacts with the media

8. Special advisers are able to represent Ministers' views on Government policy to the media
9. All contacts with the news media should be authorised by the appointing minister
10. Special Advisers must not take public part in political controversy..... avoiding personal attacks....

Relations with the Government Party

11. Special Advisers provide advice on the development of Government policy and its presentation. It is in these two areas of activity that Government and Party may overlap.
12. The Civil Service has no monopoly of policy analysis and advice.
13. The Government needs to present its policies and achievements to the public in order to aid understanding and so maximise the effectiveness of its policies
15. Special advisers must not take part in the work of the Party's national organisation; and although they may continue, during Elections, to give specialist or political advice to their Ministers they must be careful not to take any active part in the campaign going beyond the provision of such advice.
16. Where a special adviser wishes to undertake work for a political Party which does not arise out of government business they may do this either in their own time, outside office hours, or under a separate contract with the Party, working part-time for the government.

Involvement in politics in a private capacity: national political activities

17. Special Advisers must not take part in national political activities.
18. In particular:
 - i) if Special Advisers are publicly identified as a candidate or prospective candidate for Parliament they must resign their appointment;
 - ii) if they wish to take part in a.... election campaign, they must first resign their appointment. If they wish their appointment to carry on during a campaign, they may continue to give specialist or political advice to their Minister as before, but they must be careful not to take any active part in the campaign going beyond the provision of such advice.
 - iii) if, with the approval of their Minister, they wish to assist with other party political matters such as a leadership campaign, they may do so while on paid or unpaid leave

Involvement in politics in a private capacity: local political activities

19. With the approval of their Minister, Special Advisers may undertake, or continue to undertake, all forms of local political activity, but not local activities in support of national politics..
20. Local political activities are: candidature for, or co-option to, local authorities;
21. If Special Advisers take part in local political activities, they must at all times observe discretion, take care to express comment with moderation and avoid personal attacks.

Complaints

22. Any civil servant who believes that the action of a special adviser goes beyond that adviser's authority or breaches the Civil Service Code should raise the matter immediately with the Secretary of the Cabinet or the First Civil Service Commissioner, directly or through a senior civil servant.

Comment : This code seeks to limit the scope of legitimate activities of special advisers whilst at the same time providing a rationale and justification for their existence .

Question : To what extent, do you consider that the Code acts as robust safeguard against abuse, as opposed to a charter to act with impunity?