



House of Commons
Public Administration Select
Committee

**Mandarins Unpeeled:
Memoirs and
Commentary by
Former Ministers and
Civil Servants**

**Fourteenth Report of Session
2007–08**

*Report and appendices, together with formal
minutes*

*Ordered by The House of Commons
to be printed 22 July 2008*

HC 664
Published on 5 August 2008
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

Current membership

Dr Tony Wright MP (*Labour, Cannock Chase*) (*Chairman*)
Mr David Burrowes MP (*Conservative, Enfield Southgate*)
Paul Flynn MP (*Labour, Newport West*)
David Heyes MP (*Labour, Ashton under Lyne*)
Kelvin Hopkins MP (*Labour, Luton North*)
Mr Ian Liddell-Grainger MP (*Conservative, Bridgewater*)
Julie Morgan MP (*Labour, Cardiff North*)
Mr Gordon Prentice MP (*Labour, Pendle*)
Paul Rowen MP (*Liberal Democrats, Rochdale*)
Mr Charles Walker MP (*Conservative, Broxbourne*)
Jenny Willott MP (*Liberal Democrats, Cardiff Central*)

Powers

The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>

Committee staff

The current staff of the Committee are Steven Mark (Clerk), James Gerard (Second Clerk), Pauline Ngan (Committee Specialist), Louise Glen (Committee Assistant), Anne Woolhouse (Secretary) and Miguel Boo (Senior Office Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Public Administration Select Committee, Committee Office, First Floor, 7 Millbank, House of Commons, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3284; the Committee's email address is pasc@parliament.uk

Contents

Report	<i>Page</i>
Background	3
The publication of political memoirs	4
Commentary by former public servants	7
Conclusions and recommendations	11
Appendix 1—Letter to the Chairman from Sir Edward Clay, dated 13 June 2007	13
Appendix 2—Correspondence between Committee staff and Foreign and Commonwealth Office	15
Formal Minutes	18
List of Reports from the Committee during the current Parliament	19

Background

1. In July 2006 we published the first ever Select Committee report into the question of the publication of political memoirs.¹ Our inquiry followed a series of publications of diaries and memoirs by former ministers, diplomats and special advisers, many of them about the war in Iraq. These included memoirs by former ministers such as the late Rt Hon Robin Cook MP and Rt Hon Clare Short MP, former special advisers like Lance Price, and former diplomats like Craig Murray and Sir Christopher Meyer.² Our particular concern was the rules on publishing memoirs; it seemed unfair that Sir Jeremy Greenstock, whose memoir never appeared, was effectively penalised for playing by the rules, while Craig Murray was able to publish his memoir despite being refused clearance by the Foreign Office. As we said then, “our inquiry revealed that at present, guidance on the publication of memoirs is weak, processes for clearance are ill-defined, and there have been no effective legal sanctions against those who publish without agreement”.³

2. Since our report, there has been no let-up in the flow of political memoirs, with publications from Rt Hon David Blunkett MP, Rt Hon John Prescott MP, Alistair Campbell, Jonathan Powell, Lord Levy and Cherie Blair.⁴ The former Prime Minister’s own memoirs are in production. It is clear that the issue remains current, and so we are returning our focus to the issue.

3. The Government very belatedly responded to our report in November 2007.⁵ Its response contained a great deal that was positive. Indeed, we have only one concern about what the Government had to say. However, some concerns have also been raised with us about possible unintended consequences of the changes we proposed. Our report therefore considers two questions:

- whether it is right that the Government should have the final say on what information can be included in memoirs; and
- whether revisions made by the Foreign Office to its rules have unduly limited former diplomats’ ability to contribute to public debate.

1 Fifth Report of Session 2005-06, Whitehall Confidential? The Publication of Political Memoirs, HC 689, July 2006

2 Robin Cook, *The Point of Departure* (London, Simon & Schuster), 2003; Clare Short, *An Honourable Deception? New Labour, Iraq, and the Misuse of Power* (London, Free Press), 2004; Lance Price, *The Spin Doctor’s Diary: Inside Number 10 with New Labour* (London, Hodder & Stoughton Ltd), 2005; Sir Christopher Meyer, *DC Confidential: The controversial memoirs of Britain’s Ambassador to the UK at the time of 9/11 and the Iraq war* (London, Weidenfeld & Nicolson), 2005; Craig Murray, *Murder in Samarkand* (London, Mainstream Publishing), 2006.

3 Fifth Report of Session 2005-06, Whitehall Confidential? The Publication of Political Memoirs, HC 689, July 2006, para 2

4 David Blunkett, *The Blunkett Tapes: My life in the bear pit* (London, Bloomsbury Publishing), 2006; John Prescott, *Prezza: pulling no punches* (London, Headline Review), 2008; Alistair Campbell, *The Blair Years: The Alastair Campbell Diaries* (London, Knopf), 2007; Jonathan Powell, *Great Hatred, Little Room: Making Peace in Northern Ireland* (London, Bodley Head), 2008; Lord Michael Levy, *A Question of Honour: Inside New Labour and the True Story of the Cash for Peerages Scandal* (London, Scribner), 2008; Cherie Blair, *Speaking for Myself* (London, Little Brown UK), 2008.

5 Fourth Special Report of Session 2007-08, Whitehall Confidential: The Publication of Political Memoirs: Government Response to the Committee’s Fifth Report of Session 2005–06, HC 91

By answering these two questions, we can judge whether the Government has managed intentionally or otherwise to convert an overly liberal regime for publication into an unjustifiably restrictive one.

The publication of political memoirs

4. Our report in 2006 called for a clearer and fairer system for agreeing that the material to be published was in the public interest, and recognised a need for some ability for government to enforce the results of that clearance process. Our guiding principle was that while there should be a presumption in favour of openness, it needed to be balanced against a countervailing public interest in restraint of the publication of material which ought properly to remain confidential. A particular concern was that ministers' and civil servants' necessary trust in each other was being eroded by books like Sir Christopher Meyer's, which clearly angered many ministers with its disclosures of confidences. Since then, David Blunkett's war of words with the former Prison Service Director-General Martin Narey may have had the same effect.⁶ It was clear from our inquiry that the Government's sole traditional recourse against disclosure of information, that of seeking an injunction to stop publication, was not only usually unsuccessful, but also drew a great deal of attention to the book in question. It was last attempted in the case of Peter Wright's writings on the Spycatcher case in 1988, although even government threats of legal action have allowed the likes of Derek Scott (a former economic adviser in Number 10) to market their work as "the book they tried to ban".⁷

5. The specific mechanism we suggested was the use of confidentiality clauses in contracts and Crown Copyright on official information, coupled with independent arbitration on disputes about what might be published.⁸ Incoming members of government in any capacity would agree that until they received approval to publish it, any unpublished material from their time in office would be regarded as confidential. Where publication was approved, copyright would revert to the author and the material would cease to be confidential; but if publication took place without authorisation, copyright would belong to the Crown, and so it would be possible for the Crown to pursue through the courts remedy for breach of copyright. In practice, this would most likely mean that the profits raised by the book would pass to the Crown, possibly along with some damages. Such a system would undoubtedly be a powerful disincentive for publishing without authorisation.

6. However, we do not believe that the Government is the right body to determine the relative public interests in disclosure and confidentiality of information. Here, we agree with Sir Christopher Meyer that "there is no intrinsic reason why a group of civil servants should be a better judge of [public interest] than one individual".⁹ **Where there is a dispute between an author of memoirs and the Government, it does not seem right that the Government should be the arbiter of that dispute as well as a party to it.** We suggested,

6 See for example David Blunkett, *The Blunkett Tapes: My life in the bear pit* (London, Bloomsbury Publishing), 2006; Martin Narey, "Blunkett said he didn't care about lives. Prisoners should be 'machine-gunned'", *The Times*, 17 October 2006

7 Derek Scott, *Off Whitehall* (New York, Ibtauris), 2004; see <http://www.amazon.co.uk>

8 Fifth Report of Session 2005-06, *Whitehall Confidential? The Publication of Political Memoirs*, HC 689, July 2006, para 122

9 Letter from Sir Christopher Meyer to Sir Michael Jay, 7 August 2005, placed in the House of Commons Library.

therefore, that it would be appropriate to have an appeal mechanism if agreement could not be reached, on a proposal, or a text, or on timing. Our proposal was that a small committee of Privy Counsellors or other senior figures could be used, to be known as the Advisory Committee on Memoirs. That Committee might have contained former experienced politicians from more than one political party, a former senior public servant and a member of the judiciary.¹⁰

7. The Government's response to our report contained much that was positive. Indeed, we found the Government were in complete agreement with most of our recommendations, notably our belief that the bias should always be in favour of publication, and the few possible justifications for non-disclosure of particular information. The Government also accepted the need for a balance between competing public interests, and agreed that ministers should not criticise named civil servants in their memoirs. Most significantly, the Government has acted on our suggestion of enforcing the approvals process through confidentiality clauses and the application of Crown copyright.¹¹

8. However, the Government did not accept our recommendation that there should be an Advisory Committee for Memoirs:

The Government believes that there should be an ongoing dialogue with prospective authors to reach agreement. The Government is not however attracted to the establishment of an Advisory Committee on Memoirs as it believes that ultimate responsibility for deciding on the balance of the public interest must rest with the Government of the day and that the establishment of an additional appeals mechanism would only serve to dilute the lines of accountability and add an unnecessary additional layer to the approvals process.¹²

9. We were not convinced by this argument, and asked for a better one from Sir Gus O'Donnell, the Cabinet Secretary. However, he did not manage to expand on the Government's position very helpfully:

On the question of whether it should be an independent thing, in the end the Government decided that it was right for the government of the day to make these decisions in terms of choosing in the public interest.¹³

10. We do not accept that the government of the day is best placed to judge whether it is in the public interest for particular information to be published. This does not seem consistent with the principle of freedom of information. We are disappointed, therefore, that the Government did not concede the logic of some form of appeal of its decisions, along the lines of an Advisory Committee for Memoirs. The application of our suggestions on confidentiality clauses and copyright without a commensurate appeals process shifts too much power from putative memoirists to Government.

10 Fifth Report of Session 2005-06, Whitehall Confidential? The Publication of Political Memoirs, HC 689, July 2006, para 106

11 Fourth Special Report of Session 2007-08, Whitehall Confidential: The Publication of Political Memoirs: Government Response to the Committee's Fifth Report of Session 2005-06, HC 91

12 As above, pp 5-6

13 Oral evidence taken on The Work of the Cabinet Office,, 15 November 2007, HC 92, Q 109

11. It is striking that the Government's response to our report does not in any way address the interaction between the regimes for approving memoirs and for administering the Freedom of Information Act (2000). Instead, it has devised an approach where if an author should want to publish something he or she knows to be true, but the Government believes it is not in the public interest for it to be published, it can forbid publication without any possibility of appeal to an external arbiter. We do not see why, if that happened, the author could not put in a request under the Freedom of Information Act for the information he or she wants to publish. If this path was followed, then suddenly the Government's decision on public interest would not be final, but subject to appeal to the Information Commissioner – and indeed to another appeal after that, to the Information Tribunal. If either of these bodies ruled that the information should be disclosed, the author would now be free to publish it – but of course some time would have passed by this stage.

12. The approach taken to judging public interest in publication of memoirs should be consistent with the approach taken to judging public interest in disclosure of information under the Freedom of Information Act. By passing that Act, the Government has accepted the principle that it cannot be the Government which is the ultimate arbiter of whether it is in the public interest for a particular piece of information to be published. It is indefensible to deny that principle in the specific circumstances of political memoirs. Indeed, we are not sure that the courts would uphold any bid by the Government to pursue remedy for breach of copyright when the decision to prohibit publication of certain information had not been tested independently of government.

13. We continue to believe that a new Advisory Committee on Memoirs would make for expert and specialised arbitration of issues around the publication of public service memoirs. However, although this argument was not put to us by the Government, we can see that one argument against such an Advisory Committee would be that it would involve the creation of yet another new regulatory body, with all the expense and bureaucracy that entails. Given the rarity of disputes over the content of memoirs, it may well be disproportionate to create a new body. However, there is another possible solution readily to hand. If we accept the principle that an independent body should judge the public interest in publication of particular information in memoirs, then there is already an independent body which specialises in applying public interest tests to disclosure of information which Government does not want to reveal. That body is the Office of the Information Commissioner.

14. An alternative to an Advisory Committee on Memoirs is that the Information Commissioner could arbitrate where there are disputes in the negotiation of the content of memoirs. The Commissioner is experienced at balancing competing public interests in openness and necessary confidentiality. In applying the Freedom of Information Act, the Commissioner is accustomed too to the entirely appropriate bias towards publication. Although the Commissioner would not necessarily have the nuanced understanding of issues around memoirs which an Advisory Committee could provide, allocating this role to the Commissioner would be simple, consistent and cost-effective. Whatever model is preferred, we call on the Government to make one final reform to complete a fair, practical system for approving memoirs.

Commentary by former public servants

15. Memoirs are not the only means by which former ministers and civil servants share their experiences in government with the wider public. There is a range of communications media which can give a voice to those who have once been on the inside of the executive branch. Former ministers in particular are often found writing newspaper columns or giving interviews in print, on radio or on television, while many of course remain Members of one or other House of Parliament. While former civil servants appear less frequently in these media, there are occasions when their expertise can make them particularly informative commentators, and it is clearly in the public benefit for them to participate in public discussion.

16. One of the findings of our last inquiry into political memoirs was that differing approaches were taken by the Home Civil Service and the Diplomatic Service in respect to what public comments were allowed by former staff. The then Foreign Secretary, Rt Hon Jack Straw MP, responded to this during our inquiry by making changes to Diplomatic Service Regulation 5 (DSR 5), ostensibly to bring it into line with the Civil Service Management Code. His full written ministerial statement is provided below.

Diplomatic Service Regulations (Publication Rules)

The Secretary of State for Foreign and Commonwealth Affairs (Mr. Jack Straw): In a written statement in response to a question by my hon. Friend the Member for Pendle (Mr. Gordon Prentice) on 28 November 2005, *Official Report*, column 165W, I said that I hoped to make an announcement soon on my examination of the relevant diplomatic service regulations with a view to making changes to ensure that they more accurately reflect the overall purpose of the regulations and conventions concerning publications by serving and former officials.

I have now approved a revised version of diplomatic service regulation five which governs the use of official information or experience, and associated guidance. The new version brings the regulations into line with the civil service management code and has been brought to the attention of all FCO staff. The main changes are:

Clarification of the continuing obligation on former officials to obtain permission to write books before entering into commitments with publishers; and to submit texts for clearance.

An explicit bar on memoirs by serving officials, although they may, with permission, write other books and articles.

The additional requirement to avoid writing anything that would damage the confidential relationship between Ministers, or between Ministers and officials.

In addition, all contracts of employment and letters issued on retirement or resignation now explicitly draw attention to the rules on publication and the duty of confidentiality. This will be systematically re-drawn to the attention of staff at key points in their career. Staff are also required to sign an undertaking which states that they have read, understood and agree to be bound by the rules on publication. David Warren, the director of human resources, has already written to all senior FCO officials to explain the revised requirements.

The regulations will be subject to regular review and revision in line with any future changes to the civil service management code. I shall of course also take into account any relevant recommendations from the Public Administration Select Committee when it reports on this issue. I have placed copies of the new regulations, the guidance, and David Warren's letter to all senior staff in the Library of the House.¹⁴

17. Possible problems with the revised version of DSR 5 were first brought to our attention in June 2007, by Sir Edward Clay, the former British High Commissioner in Nairobi.¹⁵ Sir Edward retired from the Diplomatic Service in July 2005, but was subsequently selected by the Foreign Office for a part-time post in 2006—after the revisions to DSR 5 had taken place. As a result of the Foreign Office’s change in practice, he was presented at this time with a draft letter of employment setting out the rules by which he would be bound if he took the new (non-sensitive) post. The revised DSR 5 now included provision that former members of the Diplomatic Service must not, without first seeking clearance ...

... publish or broadcast, or enter into any commitment to publish or broadcast, any personal account of their experience in Crown employment or any material which draws on, or appears to draw on, official information or experience gained in the course of official duties.¹⁶

This contrasts dramatically with the previous version of the regulation, which noted only that former members of the Diplomatic Service “must ... consult the FCO”, and that “you are in particular urged to do so if you contemplate publishing memoirs”.¹⁷

18. Sir Edward’s contention was that taking the new job, and signing up to contractual terms including the revised DSR 5, would prevent him from serving the public interest in ways he was already legitimately doing—notably by writing articles and giving broadcast interviews drawing on his long experience serving the British government abroad. He accordingly declined to sign the letter and take up the new post. More important to him, however, was the general implication of the Foreign Office’s new approach:

I think the present rules are excessively wide-ranging and oppressive in their intent and implication. I understand retiring members of the FCO now have to acknowledge that the rules apply to them after retirement and, indeed, until death ...

The suggestion that diplomats should not say, write or in any way express views which may draw on their whole professional experience is very far-reaching. I think it may also be unenforceable. But the sanctions against expressing opinions without prior clearance will mean the loss of contributions by diplomats or home civil servants to discussion of matters of public interest.¹⁸

19. We were concerned by the suggestion that the new rules were excessively wide-ranging and oppressive, and so we asked Sir Gus O’Donnell whether the Foreign Office had overreacted to the actions of a few former diplomats. He seemed to accept that the Foreign Office had indeed gone too far in limiting free speech:

I have had discussions with Peter Ricketts [Permanent Secretary at the Foreign Office] about that in terms of the rules they have imposed and he is looking again at

15 See Appendix 1

16 Diplomatic Service Regulation 5, March 2006, paragraph 15

17 Diplomatic Service Regulation 5, 2004, paragraph 15

18 Appendix 1

those. There is an issue there about whether they were too comprehensive. He wants to address that, so that will be sorted out.¹⁹

As yet, though, the issue does not seem to have been addressed. Sir Peter Ricketts informed us in September 2007 that there would be further revisions in line with any future changes to the Civil Service Management Code, and that his staff had been working with the Cabinet Office to “further clarify” the rules. He also told us that they would be “widening that consultation” once the response to our report was issued. The response was duly issued in November 2007, but we have seen no signs of consultation on the rules.²⁰

20. Sir Peter did tell us, though, that he rejected Sir Edward Clay’s arguments:

I do, however, believe that Sir Edward’s contention that “the present rules are excessively wide-ranging and oppressive in their intent and implication” is wrong. As the Committee’s report makes clear, there is an important balance to be struck ...

I continue to believe that former members of staff are aware of their continuing obligations of confidentiality and I rely on their good sense and judgement about how much they can say publicly without reference to the FCO. But I do expect them to refer to us where they are in doubt, or need guidance about where the line should be drawn.

21. DSR 5, however, does not rely on the “good sense and judgement” of former diplomats about how much they can say publicly without asking the FCO. As we have seen, it is unequivocal in its requirement for the FCO’s approval to be sought in advance of any public comments being made which draw on any experience whatsoever gleaned in diplomatic service. It is an emphatic rejection of the “good chaps” model of regulation. It is also, were it to be enforced to the letter, fairly draconian. While it is reasonable that the FCO should be consulted on the text of memoirs or even articles, it would be difficult for every TV or radio interview with former diplomats to be cleared in advance with the FCO, as the nature of those media is that they require rapid reactions. Nor, even if the FCO approved an interview taking place, could it effectively censor what the interviewee said, unless all interviews with former diplomats were to be pre-recorded and subjected to FCO clearance. Such a practice is surely unworkable, as Sir Edward Clay acknowledges.

22. In reality, then, the FCO’s response is not to attempt to enforce its rules. As Sir Peter Ricketts said, he relies on good sense and judgement. Sometimes, as with Sir Christopher Meyer, that approach may be unsuccessful, but in general we share Sir Peter’s confidence that former members of staff are aware of their continuing obligations of confidentiality. In other words, they have to take their own decisions in balancing the public interests between openness and confidentiality. We saw an example of that in February 2008 when the former FCO Press Secretary John Williams wrote an article in the Guardian and appeared on TV discussing his involvement in preparing the dossier on weapons of mass destruction in Iraq. Although we understand that they had acknowledged his intention to

19 Oral evidence taken on The Work of the Cabinet Office,, 15 November 2007, HC 92, Q 109

20 Appendix 2

comment on stories about himself, the text of his article was clearly not approved by the Foreign Office; still less could they have effectively limited his words on Newsnight.²¹

23. **The revised version of Diplomatic Service Regulation 5 is another example of the Government replacing a regime that may be too liberal with one that may be too restrictive. It is too stringent to expect people to seek clearance for anything they say that draws on any experiences they had in their entire careers. Were the rules to be applied literally, they would (among other things) prevent any live TV or radio commentary from former diplomats for the rest of their lives. They would thus substantially diminish informed discussion of major world events. The contribution of former diplomats to our understanding of what is going on in Zimbabwe, or Kenya or Pakistan, should not be underestimated. Nor should it be curtailed.**

24. **We cannot judge the intent behind the new rules, but the results do indeed appear to be excessively wide-ranging and oppressive. Their only saving grace is that they seem to be unworkable. In practice, the Foreign Office continues to rely on the good sense of its former staff. It should say so. There is no sense in maintaining a rule that is both wrong in principle and manifestly unworkable in practice.**

25. **Both in respect of memoirs and in respect of public commentary by former diplomats, a pendulum has swung since our inquiry in 2006. Government was understandably concerned that a too liberal regime was having deleterious effects on trust and frankness between politicians and officials; but in tackling this problem, it has created new ones. In this report we have drawn out two important respects in which, having once been too liberal, the Government has now set up a regime which may instead be unduly restrictive.**

21 John Williams, "Dodgy judgments: I wish I had never drafted the dossier, but I trusted Blair on Iraq - after all, he'd been right on Kosovo", *The Guardian*, 18 February 2008, p 28; *Newsnight*, BBC2, 18 February 2008

Conclusions and recommendations

1. Where there is a dispute between an author of memoirs and the Government, it does not seem right that the Government should be the arbiter of that dispute as well as a party to it. (Paragraph 6)
2. We do not accept that the government of the day is best placed to judge whether it is in the public interest for particular information to be published. This does not seem consistent with the principle of freedom of information. We are disappointed, therefore, that the Government did not concede the logic of some form of appeal of its decisions, along the lines of an Advisory Committee for Memoirs. The application of our suggestions on confidentiality clauses and copyright without a commensurate appeals process shifts too much power from putative memoirists to Government. (Paragraph 10)
3. The approach taken to judging public interest in publication of memoirs should be consistent with the approach taken to judging public interest in disclosure of information under the Freedom of Information Act. By passing that Act, the Government has accepted the principle that it cannot be the Government which is the ultimate arbiter of whether it is in the public interest for a particular piece of information to be published. It is indefensible to deny that principle in the specific circumstances of political memoirs. Indeed, we are not sure that the courts would uphold any bid by the Government to pursue remedy for breach of copyright when the decision to prohibit publication of certain information had not been tested independently of government. (Paragraph 12)
4. We continue to believe that a new Advisory Committee on Memoirs would make for expert and specialised arbitration of issues around the publication of public service memoirs. However, although this argument was not put to us by the Government, we can see that one argument against such an Advisory Committee would be that it would involve the creation of yet another new regulatory body, with all the expense and bureaucracy that entails. Given the rarity of disputes over the content of memoirs, it may well be disproportionate to create a new body. However, there is another possible solution readily to hand. If we accept the principle that an independent body should judge the public interest in publication of particular information in memoirs, then there is already an independent body which specialises in applying public interest tests to disclosure of information which Government does not want to reveal. That body is the Office of the Information Commissioner. (Paragraph 13)
5. An alternative to an Advisory Committee on Memoirs is that the Information Commissioner could arbitrate where there are disputes in the negotiation of the content of memoirs. The Commissioner is experienced at balancing competing public interests in openness and necessary confidentiality. In applying the Freedom of Information Act, the Commissioner is accustomed too to the entirely appropriate bias towards publication. Although the Commissioner would not necessarily have the nuanced understanding of issues around memoirs which an Advisory Committee could provide, allocating this role to the Commissioner would be simple, consistent and cost-effective. Whatever model is preferred, we call on the Government to make

one final reform to complete a fair, practical system for approving memoirs. (Paragraph 14)

6. The revised version of Diplomatic Service Regulation 5 is another example of the Government replacing a regime that may be too liberal with one that may be too restrictive. It is too stringent to expect people to seek clearance for anything they say that draws on any experiences they had in their entire careers. Were the rules to be applied literally, they would (among other things) prevent any live TV or radio commentary from former diplomats for the rest of their lives. They would thus substantially diminish informed discussion of major world events. The contribution of former diplomats to our understanding of what is going on in Zimbabwe, or Kenya or Pakistan, should not be underestimated. Nor should it be curtailed. (Paragraph 23)
7. We cannot judge the intent behind the new rules, but the results do indeed appear to be excessively wide-ranging and oppressive. Their only saving grace is that they seem to be unworkable. In practice, the Foreign Office continues to rely on the good sense of its former staff. It should say so. There is no sense in maintaining a rule that is both wrong in principle and manifestly unworkable in practice. (Paragraph 24)
8. Both in respect of memoirs and in respect of public commentary by former diplomats, a pendulum has swung since our inquiry in 2006. Government was understandably concerned that a too liberal regime was having deleterious effects on trust and frankness between politicians and officials; but in tackling this problem, it has created new ones. In this report we have drawn out two important respects in which, having once been too liberal, the Government has now set up a regime which may instead be unduly restrictive. (Paragraph 25)

Appendix 1—Letter to the Chairman from Sir Edward Clay, dated 13 June 2007

I have read relevant extracts from the Fifth Report of the Select Committee and evidence given to the Committee covering the issue of memoirs of former public servants. I am troubled by the way in which the FCO in particular has re-drawn its rules on publications. They have done so in such a way as to give them wide and vague scope to lean on former members of HM Diplomatic Service and to interfere with their rights to contribute to public debate on matters of public interest. The revised rules appear to compromise their retired colleagues' freedom of speech and opinion.

I retired from HM Diplomatic Service in July 2005. I was then British High Commissioner in Nairobi. The FCO changed its rules for diplomats—embodied in DSR 5 and the corresponding HSR—in March 2006. Although I was conscious of the drive for changes and the reasons behind it, I only confronted them when the FCO selected me for a part-time job later in 2006. I was then presented with a draft letter of appointment embodying the new rules. This, taken with the explanatory background, seemed to me to go very wide. In particular, it would have bound me, not only while I did this prospective part-time (and non-sensitive job), but for ever, to seek permission for every utterance I made in whatever form on any matters on which my opinion might draw on my professional experience.

I accordingly declined to sign the letter. My prospective line managers made efforts over the next three months to find a way of softening the rigour of the rules. But my views on corruption and comments I made on that subject evidently led the Minister responsible (Lord Triesman) to refuse to contemplate any variation in the standard letter of appointment. I was stood down from the job (in which I had already started work).

What is more important and of deeper concern to me than having that job removed is that I think the present rules are excessively wide-ranging and oppressive in their intent and implication. I understand retiring members of the FCO now have to acknowledge that the rules apply to them after retirement and, indeed, until death. Whatever their framers may say now, they threaten sanctions against a former FCO servant for a broad range of failures to consult before engaging in public debate. Memoirs are not the only or even main issue. Nor is the disclosure of genuinely confidential matters, which are covered by the Official Secrets Act. The suggestion that diplomats should not say, write or in any way express views which may draw on their whole professional experience is very far-reaching. I think it may also be unenforceable. But the sanctions against expressing opinions without prior clearance will mean the loss of contributions by diplomats or home civil servants to discussion of matters of public interest.

It seems to me from what I have read of the evidence to your Committee and of the Fifth Report that there was no intention to suppress public discussion nor to prevent contributions to it from former public servants. The sense of what I read is rather the

other way. And almost every day one hears or sees a former public servant or senior officer making a contribution which I expect has not been put through the slow mill of prior official sanction. I have occasionally done so myself.

My own experience has left me feeling doubtful about what the FCO's revised DSR 5 is intended to deal with, but disturbed by the use to which it has been put. I do not believe I have done anything disloyal in commenting on the issue of corruption, nor compromised matters which ought to be regarded as Confidential and are in fact protected by the Official Secrets Act. I suppose some of my comments since retirement on Rwanda and more particularly on corruption might potentially have affronted the French Ambassador and some elements of the Kenya Government respectively, but I have heard of no serious adverse repercussions at the state level. As for Ministers, Mr Hilary Benn has been kind enough to exchange views in writing and orally on a matter on which he knows I feel strongly and in a sense critical of part of his Department's policy. It seems his tolerant view is not shared by civil servants in DfID or the FCO.

My experience, if it is useful at all, might just be to add a little weight to the Select Committee's evident view that the FCO and Cabinet Office could better have revised the relevant rules together and in consultation. In the process perhaps they might have restrained their indignation over memoirs and the threat they supposedly present to relations between civil servants and ministers from being used as a reason for trying to gag public servants, once their service to the Crown is spent, from making any comment without prior authorisation.

I have thought hard before writing because I felt reluctant to bother you. I am not writing to my constituency MP because I do not have an individual case to pursue, at this stage. I put it to you as the Chairperson of the Committee reflecting Parliament's interest in the broader policy. It is that which bothers me. If you think it useful, I am ready to give more of the background to my recent experience. I should be very interested in your comments, in any case.

Appendix 2—Correspondence between Committee staff and Foreign and Commonwealth Office

Letter from James Gerard, Second Clerk of the Committee, to Sir Peter Ricketts KCMG, Permanent Under-Secretary, Foreign and Commonwealth Office, dated 15 August 2007

You may be aware that the Public Administration Select Committee takes an interest in the rules regarding the publication of memoirs by serving and former public servants. In particular, the Committee published a report in 2005–06 on this subject which is still awaiting a Government response.

The Committee has received correspondence from Sir Edward Clay, a retired diplomat, expressing concern over the effects of Diplomatic Service Regulation 5 as it has been set since March 2006. In particular, he is concerned that “the present rules are excessively wide-ranging and oppressive in their intent and implication”. He also suggests that the rules may be damaging to informed public debate, and that indeed they may be unenforceable.

I enclose a copy of his letter to the Chairman of the Committee, Tony Wright MP. I would be grateful for your comments on the issues he raises. I should be clear at this stage that the Committee is not looking to take up Sir Edward's individual case but is interested in the questions of general principle which arise.

I am writing along similar lines to Sir Gus O'Donnell as Head of the Home Civil Service.

Letter from Sir Peter Ricketts to James Gerard, dated 11 September 2007

Thank you for your letter of 15 August enclosing a copy of a letter from Sir Edward Clay to Dr Tony Wright MP, dated 13 June. You asked for my comments on the general principles that he raises.

As the Committee is aware, the current publication rules in Diplomatic Service Regulations (DSR) 5 are based as much upon established conventions and standards of conduct expected of all civil servants as on actual legal obligations. On the whole, the system has worked well but it has not always stood up to challenge by determined authors, as evidenced by the Committee's report on the Publication of Memoirs.

In recognition of this, the then Foreign Secretary set out in a Ministerial Statement on 6 March 2006 that the DS regulations had been revised to align them with the Civil

Service Management Code and to ensure that they more accurately reflected their overall purpose. The rules, which apply to both serving and former officials, are also referred to in contracts of employment and in letters issued on retirement and resignation.

The Foreign Secretary's statement went on to say that there would be further revisions in line with any future changes to the Civil Service Management Code, and that account would be taken of the recommendations of the Committee when it published its report. This is reflected in the evidence given by the Foreign Secretary when he appeared before the Committee on 29 March 2006.

As you say, the Government has not yet made its response to the Committee's Report. But my staff have been working with the Cabinet Office to further clarify our rules and we will be widening that consultation once the response issues.

I do, however, believe that Sir Edward's contention that "the present rules are excessively wide-ranging and oppressive in their intent and implication" is wrong. As the Committee's report makes clear, there is an important balance to be struck. On the one hand officials should have the freedom to write accounts of their time in government which can help inform public understanding and debate. On the other hand, there is a public interest in protecting the good working of government particularly where possible damage to national security, international relations or trust within Government is involved. The FCO strives to maintain this balance. Assessing this is always a matter of judgement, but I do not think that any one individual acting in isolation can do so reliably.

I continue to believe that former members of staff are aware of their continuing obligations of confidentiality and I rely on their good sense and judgement about how much they can say publicly without reference to the FCO. But I do expect them to refer to us where they are in doubt, or need guidance about where the line should be drawn.

I hope these comments are helpful to the Committee.

Letter from James Gerard to Sir Peter Ricketts, dated 28 January 2008

Thank you for your helpful letter of 11 September 2007. We have taken some time in replying as we were awaiting the Government's response to our report on the publication of political memoirs, which we received in November.

I understood from your letter that the intention was to consult on revised Diplomatic Service Regulations once that Government response was issued. I do not know if you have begun that process, but I would be grateful if you could inform me as to whether that consultation is underway or when you expect it to commence. Any further details

would also be helpful. It is clear that there is some continuing dissatisfaction, and the Committee might well want to contribute to any consultation.

Also, it appears that the Diplomatic Service Regulations are not accessible to members of the public. The House of Commons Library only has a version which is no longer current, although I understand that they are looking to rectify that, but is there any reason why the regulations can not be available online?

Letter from Sir Peter Ricketts to James Gerard, dated 20 February 2008

Thank you for your letter of 28 January, in which you ask for further details about the revisions to Diplomatic Service Regulation 5 following publication of the Government's response to your report on political memoirs.

The Government's response undertakes to clarify the rules for civil servants relating to memoirs in the next version of the Cabinet Office publication Directory of Civil Service Guidance, which is currently being updated and also in the Civil Service Management Code. Once this is done, the Diplomatic Service Regulations will be revised exactly in line with these. I consider it important to do it this way round in order to avoid any inconsistencies between the two sets of rules. As your Committee observed, failure to align changes to Cabinet Office and FCO rules in the past has resulted in the changes being made in an unsatisfactory way. I am keen that we avoid this in future.

The proposed revision to Diplomatic Service Regulation 5 will also provide us with an opportunity to update and simplify the language in the current version, as Lord Malloch Brown said in response to an oral question in the House of Lords last October. This should help to clarify the rules and to clear up any misunderstandings that may have arisen and which may have contributed to the dissatisfaction to which you refer.

Consultation with our Trade Union side will commence as soon as the changes to the Civil Service Management Code have been agreed and we can take forward our own revisions. I cannot say exactly when this will be, but we will not delay. We would not normally expect to consult any wider, although I would be happy to keep your Committee informed about progress.

Finally, thank you for your suggestion about making the Diplomatic Service Regulations available online. We receive very few enquiries about these regulations which is why we have not considered doing so in the past. But I agree that, once the revisions have been made, we should re-consider this with a view to publishing them on the FCO website.

Formal Minutes

Tuesday 22 July 2008

Members present:

Dr Tony Wright, in the Chair

Paul Flynn
Kelvin Hopkins
Julie Morgan

Mr Gordon Prentice
Paul Rowen
Mr Charles Walker

Draft Report (*Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 25 read and agreed to.

Papers were appended to the Report as Appendices 1 and 2.

Resolved, That the Report be the Fourteenth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 9 October at 9.45 a.m.]

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2007–08

First Report	Machinery of Government Changes: A follow-up Report	HC 160 (<i>HC 514</i>)
Second Report	Propriety and Peerages	HC 153 (<i>Cm 7374</i>)
Third Report	Parliament and public appointments: Pre-appointment hearings by select committees	HC 152 (<i>HC 515</i>)
Fourth Report	Work of the Committee in 2007	HC 236 (<i>HC 458</i>)
Fifth Report	When Citizens Complain	HC 409 (<i>HC 997</i>)
Sixth Report	User Involvement in Public Services	HC 410 (<i>HC 998</i>)
Seventh Report	Investigating the Conduct of Ministers	HC 381
Eighth Report	Machinery of Government Changes: Further Report	HC 514
Ninth Report	Parliamentary Commissions of Inquiry	HC 473
Tenth Report	Constitutional Renewal: Draft Bill and White Paper	HC 499
Eleventh Report	Public Services and the Third Sector: Rhetoric and Reality	HC 112
Twelfth Report	From Citizen's Charter to Public Service Guarantees: Entitlements to Public Services	HC 411
Thirteenth Report	Selection of a new Chair of the House of Lords Appointments Commission	HC 985

Session 2006–07

First Report	The Work of the Committee in 2005–06	HC 258
Second Report	Governing the Future	HC 123 (<i>Cm 7154</i>)
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 (<i>HC 88 Session 2007–08</i>)
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 (<i>HC 922</i>)
Sixth Report	The Business Appointment Rules	HC 651 (<i>HC 1087</i>)
Seventh Report	Machinery of Government Changes	HC 672 (<i>HC 90 Session 2007–08</i>)
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006–07	HC 922 (<i>HC 1048</i>)
Ninth Report	Skills for Government	HC 93 (<i>HC 89</i>)
First Special Report	The Governance of Britain	HC 901

Session 2005–06

First Report	A Debt of Honour	HC 735 (<i>Cm 1020</i>)
Second Report	Tax Credits: putting things right	HC 577 (<i>HC 1076</i>)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (<i>HC 1205</i>)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119 (<i>Cm 7374</i>)
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 (<i>HC 91, Session 2007–08</i>)
Sixth Report	The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications	HC 1081 (<i>Cm 1961</i>)
Seventh Report	The Ministerial Code: the case for Independent Investigation	HC 1457 (<i>HC 1088, Session 2006–08</i>)
First Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690