

Summary of evidence presented to the 30-year Rule Review Committee, 14 April 2008 at Church House, Westminster

Committee members present:

Paul Dacre (chair)

Professor David Cannadine

Sir Joseph Pilling

Evidence from Lord Butler of Brockwell

Asked if the Fol Act had undermined the 30-year rule, Lord Butler said he had no practical experience of the Act as he had left Government before it came into force.

He was then asked if he had been surprised by the recent order to release minutes of the Cabinet meeting that considered the Attorney General's advice on the Iraq war. Lord Butler said that the Government had struck a balance between public reassurance and normal confidentiality, and that "special cases like [the release of the advice in 2005] have no particular significance."

He was then asked if the increased number of memoirs published by ministers, special advisers and civil servants had undermined the 30-year rule. Lord Butler said that the Radcliffe Committee had looked at the issue and had recommended a 15-year rule in the case of confidences between Ministers and civil servants. That had been breached while he had been in office, particularly by the publication of Nigel Lawson's memoirs. There had since been further breaches of the 15-year confidence rule. He said: "Memoirs are not official records. Memoirs are a party's accounts and they strengthen the case, I guess, for more disclosure so that the memoirs can be checked against the account of what actually happened, although of course they are not the only consideration." He said that "the rabbit is out of the hutch as far as ministerial memoirs are concerned...Ministers do want very quickly to get their account of what they did on the record." However, in general memoirs did not undermine the 30-year rule and would not do so in future unless it was reduced to a very short period, such as five years.

Asked for his views to the claim that a reduction in the rule would lead to increased 'sofa government', he said: "I think there is always a balance between accountability and disclosure and the frankness of discussion in government." But he did not think a reduction in the rule would make ministers and civil servants more cautious because people were already cautious. He had been cautious because he had been concerned about things being leaked more immediately to the press rather than through release.

"It is the effect on the quality of argument that matters; and also on accountability, because if people feel there are things they cannot record and maybe are reluctant to say, then that has an inhibiting effect on the accountability of Government. That is the thing that worries me." Even

“gossip” could have an “an inhibiting effect on the frankness of the discussion.”

Asked if he favoured a reduction in the rule, Lord Butler said that he did not. It was “probably best” that papers did not generally come out during the course of someone’s career. There were exceptions due to FOI or when papers were needed for inquiries or for academic research.

He was then asked about his inquiry into intelligence leading up to the Iraq war and whether there had been any deterioration in standard of record-keeping in Government. Lord Butler said that the Hutton inquiry had highlighted this, whereas his inquiry had concerns about the informal nature of the Cabinet and its committees, particularly the lack of accompanying papers. There had been “Powerpoint presentations instead of papers”.

“What we were concerned about in that inquiry was more the effects of that on the process and the quality of the decisions that were made on this crucial matter of going to war rather than the subsequent accountability of it.” He added: “I think that Hutton did reveal a situation where discussions had taken place so informally that they were not properly recorded at all.”

Asked by the Chair, Lord Butler agreed that ‘sofa government’ had little to do with fear of documents being released after 15 or 20 years, and was more to do with the style of leadership adopted by the incumbent of Downing Street.

He also agreed with Professor Cannadine’s proposition that “the motive for recording things cautiously was for fear of leakage to the press rather than concern about its eventual appearance in the public record.”

Lord Butler agreed that it was possible for civil servants to be caught by the 30-year rule, whereby papers could be released while they were in office, but that this would be exceptional as civil servants would tend to be principally responsible for an issue at the age of 40 rather than at 30. His career had not been affected by a 30-year rule, but would have been “caught” by a 20-year rule.

He was then asked whether shortening the rule and redacting the names of the civil servants might be an effective way to deal with partial memoirs. Lord Butler said he did not think so. He thought that it would be reasonably straightforward “in exciting cases” to work out the person’s name, and also the very fact that a paper had been redacted could stimulate interest. It was important to defend the neutrality of civil servants because “politicians often find it difficult to understand civil servants because they find it difficult to understand people who by their profession are non-ideological and they often believe they cannot be.”

Asked about the impact of e-mail and electronic records, Lord Butler said e-technology had come late to the civil service. “People are less careful with emails and more under the illusion that they can be destroyed than is in fact

the case. As we know, quite a lot has come out that people have not intended to come out as a result of email...I do not think that is good.”

He was then asked if the record-keeping by special advisers had been defective. Lord Butler said that he had no reason to believe so – they behaved in much the same way as civil servants. “They sometimes put things on paper and they sometimes spoke them. When they were put on paper they were on the file and when they spoke them there would have been a record if it was part of a meeting.”

Lord Butler said that technology such as mobile phones had adversely affected the ability to keep records, but also that there had been a reduction of trust between Ministers and officials “which is all connected with the risk of leaks.”

Asked about whether we now lived in a different age, and whether the public had a “right to know” in order to inform their voting decisions, Lord Butler said that many things were already known to the public; and when there was an “urgent need to know” inquiries had served that purpose. “Accountability is at the heart of this and I greatly believe in accountability.” Asked by the Chair whether there was any accountability after 30 years, he said, “Accountability to history.” He had some sympathy with the “right to know” argument but felt that it did not change the balance: “The test I apply to this is: do you think things would be improved if Cabinet meetings were to be televised?”

Asked to comment about international comparisons where similar democracies had 20-year limits, Lord Butler said: “I make two observations on this. One is the fact that other countries are doing it does not necessarily mean it is right, but the other thing is also one has to take into account the particular nature of our set-up and in particular the non-political civil service.”

Concluding, Lord Butler said, “disclosure both supports but also may inhibit accountability, and that is the dilemma. Looking back to where I left it, it seemed to me that FoI, which protects some information for up to 30 years, longer in some cases, combined with access for particular purposes, is a balance with which I was, and on the whole remain, happy.”