

## Access by Ministers and Special Advisers to documents of a previous administration

1. Documents of a former Administration are the property of the Crown. Access to them by any person not entitled in an official capacity to see them requires the agreement of the Government of the day until they are released as public records.
2. Ministers of a former Administration, whether currently in office or not, may see but may not retain official documents which they saw as members of that administration. Such access may be made conditional. (See *Access by former Ministers to official papers*.)
3. It is an established convention that Ministers of a current Administration may not generally see documents of a former Administration of a different political party.
4. This convention was last set out in detail by the then Prime Minister in reply to a Written Parliamentary Question on 24 January 1980 (Official Report cols. 305 7):

The guidance to officials on the availability to Ministers of one Administration of the papers of a previous Administration is as follows:

It is an established rule that after a General Election a new Administration does not have access to the papers of a previous Administration of a different political complexion. This rule applies especially to Cabinet papers.

The general principle is clear. An incoming Minister should not have access to any minutes or documents written by a predecessor of a different Party other than those which were published or put in the public domain by that predecessor; nor should he be told whether directly or by access to departmental papers which would tell him exactly what his predecessor had said. Moreover, it may be equally important to withhold papers which show the advice given by officials to the previous Minister even though there may be no indication on them of his views.

On the other hand, the national interest requires that there should be some continuity of policy. The arguments for continuity are stronger in certain fields than in others. Foreign policy is generally recognised as providing the classic example of a field in which continuity is important; but there are other fields in which some at least of the work of departments ought to continue on broadly the same lines as before. Under modern conditions it is not practicable for departments to make a completely fresh start with all their work.

There is no neat formula which can be used to reconcile the general principle with the practical considerations which sometimes point in the opposite direction. Departments use their discretion in making the best reconciliation possible in each individual case. It is one thing to give an incoming Minister a general account of the basis of departmental policy in a particular field under the preceding Administration and another to allow him to examine the particular personal views of his predecessor on certain points. On personal matters such as these, especially when the political content is high, a department is expected to be very discreet about what outgoing Ministers have said or thought. On the other hand there may be no objection to showing an incoming Minister, e.g. a report which his predecessor saw but on which action remains to be taken, or documents which were made widely available outside Government.

It may be possible to draw a distinction between documents recording the way in which decisions were reached and documents announcing these decisions. The guiding line must be to avoid embarrassment to previous Ministers.

Nor can there be any standard action in those cases where departments feel that incoming Ministers have a need to know. Some papers, e.g. reports, may, if appropriate, be suitable for showing to new Ministers as they stand. In other cases, eg where the outgoing Minister was personally involved or expressed views on paper, the requirement can be met by preparing a summary of what was at issue, and the action taken without showing incoming Ministers the actual documents which came before the previous Administration. In any instance (whether an individual case or not) where it is decided that papers of the previous Administration ought to be disclosed to a new Government difficulty may be avoided if, as a matter of courtesy, the former Minister is consulted before this is done.

It is questionable whether in this context a distinction can be drawn between departmental papers about policy matters and those about individual cases. Individual case work often has a substantial political (if not policy) content and the possibility of embarrassment could be just as real if a Minister were able to learn about the personal views of his predecessor on the handling of an individual case as it would be in matters of another kind. And, in any event, it is not easy in practice to draw a hard and fast line between case work, and policy. Although, therefore, it is a fair generalisation that papers on case work are less likely to cause difficulty than papers on policy, departments should nevertheless bear in mind the main objective to protect Ministers from the political embarrassment that would arise if their successors saw documents that it was not appropriate for them to see.

**5. The Prime Minister said in reply to a further Question that:**

The guidance and the conventions which it embodies have been accepted by successive Administrations of both parties for many years (col. 307).

### Cabinet Papers

**6.** When an Administration of a different political party takes office, directions are issued both to outgoing Ministers and to their departments to arrange for the destruction or return of any Cabinet and Cabinet Committee papers which either may be holding. In no circumstances may a Cabinet or Cabinet Committee paper of a previous Administration be shown to a Minister of the current Administration without the approval of the Secretary of the Cabinet.

### Other Information

**7.** In the case of other documents (and non-documentary information), departments have to make the best reconciliation that they can between providing present Ministers with all the information which they need in order to do their job and the conventions outlined in the Prime Minister's statement. The Prime Minister's Parliamentary answer recommends that the guiding line should be to avoid embarrassment to previous Ministers. This may be difficult to assess in certain circumstances, and departments may find it helpful to apply a broad rule of thumb test along the lines of whether the disclosure of particular documents or information