



IN CONFIDENCE



FOREIGN AFFAIRS COMMITTEE

INQUIRY INTO THE DECISION TO GO TO WAR IN IRAQ:

Orders and precedents of the House governing appearance of witnesses

Note by the Second Clerk

Introduction

This note aims to provide Members with some background information on the rules and precedents governing the appearance of witnesses before select committees. This information may be helpful in relation to the forthcoming inquiry into the war in Iraq.

Formal powers

By virtue of the authority granted to them under Standing Order No. 152 (4a), all departmental select committees have the power to send for "**persons, papers and records**". Generally, committees need only request witnesses to give evidence but a formal summons can be issued by the Chairman or Clerk. Should the witness thus summoned fail to attend (thereby committing a contempt of the House), the committee can report the matter to the House, which in the past has ordered the offender to attend at the bar.

There are two principal **exceptions** to this power:

- (a) **Members:** Members of either House, including **ministers**, may not be formally summoned to attend as a witness before a departmental select committee. In general, it is rare for ministers in the department scrutinised by a committee to refuse a reasonable request to provide oral evidence. However, there are examples of ministers from other government departments refusing to appear before a committee to which they are not responsible (see below). It should also be noted that a select committee cannot *order* a Secretary of State to produce papers he/she is unwilling to supply; this may only be done by the House agreeing a suitable Motion for an Address.

(In April 2002 the **Prime Minister** agreed to appear twice a year before the Liaison Committee to give evidence to its members. However, Prime Ministers have consistently declined to appear before any other select committee of the House since the 1940s.)

- (b) **Civil servants:** the rules governing the appearance of officials before select committees are less clear. The Government has issued guidance to civil servants giving evidence to committees (often referred to as the 'Osmotherly Rules'). This states that civil servants give evidence "on behalf of their Ministers and under their direction". In general, the guidance states, ministers will agree to the request of a committee to take evidence from a named official, but they retain the right to suggest an alternative official whom they

FAC/8/0001