OFFICIAL SECRETS

What Tory freedom really means

Towards the police state

Duncan Campbell and Christopher Price write: In the hands of a really oppressive government, the proposed new Protection of Official Information Bill could wholly and effectively destroy press and personal freedom in key areas of policy. The Bill defines a new type of secret information – known in official Newspeak as 'protected' – which may not be discussed at all by unauthorised citizens, irrespective of whether or not it is common knowledge or is publicly available. The Bill does not confine itself to 'disclosure' in conversation or by publication. It gives officials powers to tour the country if they wish, demanding on pain of three months imprisonment that books, documents and any other articles containing such 'protected' information be surrendered. Librarians, academics, journalists and any others interested in three key areas of protected information would not be saved from the law even if all their files held was a set of newspaper clippings. Even if unused in this way, the new law would intimidate journalists, authors and editors from free expression.

The powers contained in the new Bill go far beyond proposals made in recent reviews of the Official Secrets Act. In the protected areas of information, the government's powers would be far greater than they now possess under the old and discredited Section 2 of the Official Secrets Act. In particular, matters of defence and foreign affairs, security and intelligence, telephone tapping and mail opening would be entirely removed from public discussion. Published books and articles dealing critically with these subjects could also effectively be banned, and dispensed to the memory hole.

The Bill is now about to enter the Committee stage in the House of Lords, after receiving a second reading on Monday. Comments in the Lords were severely critical, and few peers or politicians really believe that the government is ignorant of the repressive effect of the proposed new law. The Bill does, of course, abolish the possibility of prosecution for revealing information in areas like health and social security, employment and the environment. But Section 2 was never actually used in these areas anyway, and the new Bill offers no positive encouragement to more official disclosure.

Several strange and sinister aspects of the Bill were raised in the Lords. There are six protected areas defined in the Bill; in addition to the three above, these are, generally, law and order, confidential information from other governments, and confidential information from or about individuals, companies or nationalised industries. In the latter three areas, anyone accused can offer the defence that the information concerned had previously been 'made available' to the public. This defence, according to Home Office minister Lord Belstead is not restricted to information *officially* made available. But this defence is withdrawn from anything to do with telephone tapping, or the other three areas. This, spokesmen have previously made clear, is intended to criminalise those who gather information together from public sources.

The debate in the Lords on Monday focused strongly on two issues; classification and certification. The Franks Committee which reviewed Section 2 had proposed the classification system as the lynchpin of the new law; only if a document and its information had previously been classified secret was its disclosure an offence. The government have abandoned this idea and left a dangerous mess instead. Ministers can certify that any information they care to name in the area of defence or international relations would, if disclosed, cause serious injury to the nation. They can even do this after the event, in order to ensure a conviction in court proceedings. This untrammelled right of certification promises many ludicrous scenes in court, as Lord Hutchinson revealed. A minister might certify that a particular revelation about defence would cause serious damage, and the defendant couldn't dispute this. But he could still point out that the information was already completely public and hadn't in fact caused serious damage, so that he could genuinely believe that the revelation wouldn't be seriously damaging, although the minister certified that it was. Such nonsense is characteristic of the Bill's new Newspeak.

The 'unfettered discretion' offered to ministers was also attacked by Lord Goodman, who has proposed that the government take the advice of the Chairman of the Press Council, Patrick Neill, and further amend the Bill in consultation with a few establishment figures.

Classification procedure, which the Franks Committee urged should be carefully and critically set up, has been left wholly vague. All powers of classification are vested centrally with the Cabinet Office and not under the control of individual ministers, in itself a secretive and undemocratic procedure intended to remove classification issues from parliamentary scrutiny. Instead of prescribing precise classification rules the current Bill alludes to the powers of any designated 'responsible authority' – junior clerks not excluded – and more exact regulations to be laid before parliament at a later date.

One thing is certain. When the Bill reaches the Commons around Christmas, many MPs are unlikely to lightly accept its restraints without some *quid pro quo*. That would be corresponding measures for Freedom of Information – and the removal of the outrageous powers now latent in the Bill.