

STANDARD TEMPLATE FOR FOLDER: ANSWERING FREEDOM OF INFORMATION REQUESTS

Guidance:

- All advice on freedom of information requests should use this template. Advice should be signed off at director level.
- Once the advice has been cleared by a director, please submit the advice in **draft** in a folder, using this template, to the special advisers office. You should copy the advice, and where possible, the documents, electronically to the FOI-MIN list on Outlook. If the relevant documents cannot easily be circulated electronically, please send them as normal in hard copy to the special advisers office and specify in the email to copy recipients that they can be viewed via the special advisers office.
- If the request relates to events prior to the present Government, please submit in draft to Perm Sec Action instead (and do not copy to the FOI-MIN list on Outlook).
- Please note that advice provided could itself be disclosable under Freedom of Information legislation and may be subject to review by the Information Commissioner in the event of an appeal.
- If your draft reply recommends withholding requested information then you should state that you are recommending relying on an exemption, specify the exemption and give the reasons for thinking that the exemption applies. In the case of a qualified exemption, you need also to give the reasons for thinking that the balance of the public interest favours maintaining the exemption.¹ Any such analysis should be detailed in Part 3 of this template, the background note.
- When the answer has been cleared please submit to the Correspondence and Enquiries Team who will send the response.

¹ If your draft withholds any requested information then you should clear it with Treasury Legal Advisers for compliance with section 17, which specifies what such replies need to contain.

DEADLINE FOR RESPONSE: 1 February 2005

Part 1: Detail of question

We have received a Freedom of Information request asking for '*details of government studies on the aftermath of and lessons to be learnt from Black Wednesday*'. The request is from Cathy Newman, the Chief Political Correspondent of the Financial Times.

Part 2: Draft reply to questioner

Dear Ms Newman

Thank you for your email of 4 January 2005 requesting under the Freedom of information Act (FOI Act) details of government studies on the aftermath and lessons to be learnt from Black Wednesday. We assume you are referring to the withdrawal of Sterling from the Exchange Rate Mechanism (ERM) on 16 September 1992. Relevant information is contained in the documents listed below. These have been obtained from Treasury files and include studies and minutes written by Treasury officials in relation to Sterling's departure from the ERM. We have interpreted your request widely to include reflections on the experience of ERM membership (rather than just the reserve cost of withdrawal).

DOCUMENT	DATE
The Exchange Rate	17 September 1992
Should Sterling rejoin and if so when?	18 September 1992
Calculating the Cost of "Black Wednesday"	2 August 1993
The Cost of Intervention	25 August 1993
The Cost of Intervention	10 December 1993
ERM Project	21 December 1993
Reflections on the UK's Membership of the ERM	5 January 1994
Reflections on the UK's Membership of the ERM	10 January 1994
The Cost of Black Wednesday reconsidered	6 August 1997

These documents are in large part attached; some parts of some of the documents have been withheld where we considered that the relevant information was exempt from disclosure under Section 27, 29 or 35 of the FOI Act and that, in all the circumstances of the case, the public interest in maintaining these exemptions outweighs the public interest in disclosing the information. Our reasons for applying these exemptions are explained in more detail below:

Section 27 (International relations)

Several references to the contents of private conversations between UK and foreign officials and discussions in international meetings whose proceedings are secret have been redacted. These redactions occur in the documents 'ERM project' (21 December 1993) and 'Reflections on the UK's membership of the ERM' (10 January 1994). Disclosure of these conversations would inhibit the willingness of overseas governments to engage in free discussion with the UK; while discussion within the Monetary, now EFC, Committee is premised on confidentiality. The potential prejudice to current and future UK relations with other States and interests abroad from breaching this confidentiality is such that we consider the public interest in maintaining the exemption outweighs the public interest in disclosing details of the relevant conversations or discussions.

Section 29 (The economy)

References in 'The cost of Intervention' (25 August and 10 December 1993) to the details of exchange dealings with foreign central banks have been redacted. In view of the potential prejudice to current and future UK economic interests we consider that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the detail of the relevant exchange dealings.

References in "Reflections on the UK's Membership of the ERM" (5 January 1994) to the operational details of the foreign currency intervention have been redacted. In view of the potential prejudice to current and future UK economic interests we again consider that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the operational details.

Section 35 (Formulation of government policy etc.)

Details of unpublished economic forecasts contained in the documents 'The Exchange Rate' (17 September 1992) and 'ERM Project' (21 December 1993) have been redacted and other information relating to unpublished economic forecasts is not being disclosed. Section 35 (1)(a) of the FOI Act states '*information is exempt if it relates to the formulation or development of government policy*'. Economic forecasts constitute advice and opinion that are highly important in the setting of economic policy. Disclosure of unpublished economic forecasts could inhibit the free and frank exchange of views and therefore lower the quality of economic policy. We consider that it is in the public interest to have as high quality economic policy advice as possible and accordingly that, in all the circumstances of the case, that the public interest in maintaining the exemption outweighs the public interest in disclosing details of the relevant forecasts.

We are also of the view that some parts of the information have no relevance to the substance of your request and thereby we have not disclosed it. An example is details of the names of officials who are engaged in the exchange of correspondence.

You have the right to have this decision reviewed initially by an internal review process and, if you remain unhappy with the decision, by the Information Commissioner. If you would like to have the decision reviewed please write to Kate Jenkins, Information Rights Unit, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ, stating the grounds on which you consider the decision should be changed. She will arrange for such an internal review to take place and notify you of the outcome and the process.

I hope you find this reply helpful.

Your Sincerely

Kate Jenkins

Part 3: Background note

- **A: Summary of information being recommended for disclosure.** Please include whether or not any exemptions were considered and a brief description as to how the public interest test was applied in the case of qualified exemptions. This is subject to Part C on section 36 exemptions below.

The following documents are recommended for disclosure:

- 'The Exchange Rate' – 17 September 1992
- 'Should Sterling rejoin and if so when?' – 18 September 1992
- 'Calculating the Cost of "Black Wednesday"' – 2 August 1993
- 'The Cost of Intervention' – 10 December 1993
- 'ERM Project' – 21 December 1993
- 'Reflections on the UK's Membership of the ERM' – 5 January 1994
- 'Reflections on the UK's Membership of the ERM' – 10 January 1994
- 'The Cost of Black Wednesday reconsidered' – 6 August 1997

The Bank of England have been informed of this request and commented that it is for us to make a decision on how best to answer the request on the basis of the applicable exemptions.

In the hard copy of the documents provided to the Permanent Secretary, those parts that we think should be exempted are marked in pink, those parts where exemptions were considered, but ruled out, are marked in yellow, and those parts which raise potential presentational issues, but which are outside Fol exemptions, are marked in green.

'The Exchange Rate' – 17 September 1992

This note from Chris Riley to Alan Budd argues that the depreciation of sterling may 'well be a blessing in disguise'

Should Sterling rejoin and if so when? – 18 September 1992

This note from Andrew Turnbull to Sir Terry Burns examines the factors behind the failure to sustain ERM membership and the conditions that would need to be satisfied were sterling to rejoin the ERM.

'Calculating the Cost of "Black Wednesday"' – 2 August 1993

This note, written by Stephen Davies, discusses ways of calculating the cost of Black Wednesday. The note is technical in nature and provides an estimate of the net loss arising from foreign exchange intervention in the

second half of 1992 of approximately £200 million. This figure is an estimate of the loss incurred – it does not take into account the profit that the Bank of England would have made if it had retained the level of foreign currency reserves held in August 1992. Taking into account this opportunity cost would add around \$2bn to the total loss.

“The Cost of Intervention” – 10 December 1993

Following Stephen Davies’ 2 August paper discussing ways of calculating the cost of intervention, the Bank of England was asked to do some work on the cost of intervention relative to various counterfactuals. This note from Andrew Holder to Sir Terry Burns summarises the Bank’s conclusions, which are also attached. The Bank’s primary counterfactual question is how much the reserves would have been worth in April 1993 had we not intervened at all; their conclusion is around \$4.9 billion more than the actual holdings.

‘ERM Project’ – 21 December 1993

This paper was the outcome of a 2½ month project conducted between October and December 1993 by Stephen Davies. The paper is substantial (nearly 100 pages) and is divided into two sections:

- (i) The analysis that lay behind the UK’s decision to join the ERM at the time it did and at the rate it did;
- (ii) Policy during the UK’s membership of the ERM

Exemptions considered but ruled out:

Section 27 - International Relations

- Page 73, para 2: *‘In the event the two events that together finished sterling off were:*

...2. Schlesinger’s Handelsblatt interview.

...The fact that the Bundesbank had just been seen to force a devaluation on the Italians was bound to make the markets react fiercely when it appeared that the Bundesbank had a further devaluation candidate.’

This constitutes a strong criticism of the Bundesbank and could potentially be exempted under Section 27 of the Fol Act – ‘International relations’. However, the role played by Schlesinger’s interview in Sterling’s exit from the ERM is cited in John Major’s autobiography. It would appear difficult to exempt this section given that similar criticisms of Schlesinger have been aired in this way.

- Page 80, para 3: *'it looked as though the Bundesbank was trying to force a realignment by disruptive leaks to the press.'*

Again, Section 27 may appear to be relevant here. However, '*disparaging remarks*' from sources within the Bundesbank during the ERM crisis were remarked on by John Major in his autobiography. Given that the behaviour of the Bundesbank in this respect has been referred to publicly, the case for exempting this excerpt appears weak.

Section 35 – 'Formulation of government policy etc'

This exemption covers records of communications between Ministers. The content of the conversations does not appear to be controversial in policy terms so the case for exempting these seems weak.

- Page 19, para 3 – content of minute from John Major to Mrs Thatcher.
- Page 21 and 22 – refers to '*..the draft minute for the Chancellor to send to the Prime Minister..*'. This minute is then quoted from, and it is clear that it was sent.
- Page 29 – excerpt from a letter from Chancellor to Prime Minister.
- Page 32 – excerpts from minute from Chancellor to Prime Minister.
- Page 71, para 2: Conversation between Chancellor and Prime Minister

'Reflections on the UK's Membership of the ERM' – 5 January 1994

This a minute from Paul Gray to Sir Terry Burns accompanying the study by Stephen Davies. The minute is a frank assessment of the UK's membership of the ERM and suggests some terms of reference for a study of market management techniques.

Note that page 5 is missing from this document.

'Reflections on the UK's Membership of the ERM' – 10 January 1994

This note, written by Sir Nigel Wicks, is another response to Stephen Davies's study. The note includes particular points relating to the analysis as well as personal observations by Wicks.

Paragraph 2i includes some criticism of ministerial actions, with focus on the domestic political handling of ERM entry providing '*an unhelpful and distracting backcloth for our preparations*'. UK attitudes are contrasted unfavourably with those of the French. Although potentially embarrassing, there appears little case for exempting.

'The Cost of Black Wednesday reconsidered' – 6 August 1997

This paper, written by Harold Freeman, reassesses the cost of intervention based upon the same methodology as the Bank's 1993 paper, carrying forward results to February 1994. It estimates a loss of £800m on reserve operations in August and September 1992, with an opportunity cost of £3.3bn measured in February 1994.

- B: **Summary of information not being recommended for disclosure because an exemption applies.** Please include an account of what exemption is being applied, and, in the case of qualified exemptions, how the public interest test was applied. This is subject to Part C on section 36 exemptions below.

Section 27 – International Relations

'ERM Project' – 21 December 1993

- Page 11, para 4: '*A letter of 10 November 1989 from the British Ambassador in Bonn (Mallaby) to Nicholas Bayne had reported a discussion with Poehl (Governor of the Bundesbank). Poehl said he wished the UK had joined the ERM 2 or 3 years previously and hoped we would do so in due course. But late 1989 was the wrong time. If we joined then, there would be difficulties for the UK and for the ERM. Poehl's view was clearly the same in September 1990. In a speech delivered a couple of weeks before the UK's ERM entry he argued that it was not possible for countries with three times Germany's inflation rate to join the ERM. Although he denied that the speech referred specifically to the UK, it clearly did and was genuinely interpreted in this sense.*'

This refers to a private conversation. If we were to release the contents of private conversations with foreign officials, this would inhibit the willingness of those officials to engage openly with the UK.

- Page 19, para 2: *'...There were clearly pressures for a rise in German interest rates, but a move was unlikely before the December elections'*

This could be taken as implying that the Bundesbank was subject to political pressure. To the extent that this may upset Bundesbank staff now working for the European Central Bank, and so harm relations with the ECB, we may wish to exempt this using Section 27 – 'International relations'.

- Page 30, para 2: *'A minute of 13 June from Sir Nigel Wicks to the Chancellor reported on a conversation with Tietmeyer, who seemed to be thinking of the effects of G[erman]E[conomic]M[onetary]U[nion] on the exchange markets as essentially short term:*

"He was hardly aware of Poehl's comments on UK entry. He gave as a firm personal view that he would not wish to obstruct UK entry into the wider bands if we were to apply within the next six months or so...His advice was to delay entry until the autumn: by then the UK's circumstances would be clearer and GEMU would be out of the way"

This refers to a private conversation. If we were to release the contents of private conversations with foreign officials, this would inhibit the willingness of those officials to engage openly with the UK.

- Page 60, para 3: *'On Sunday 22 December we heard that the French were intending to announce an increase in their interest rate the following morning.'*

It is not clear what the information source for this was. The source could be covert and still be in use.

- Page 67, para 3: *'Sterling was not helped by a German whispering campaign for an ERM realignment...[With reference to the FT story] Schlesinger (Bundesbank President) subsequently apologised to the British Ambassador and denied the remarks had been made by him.'*

Although this comment refers to a newspaper article, mention is made of a private conversation. If we were to release the contents of private conversations with foreign officials, this would inhibit the willingness of those officials to engage openly with the UK.

We consider that the above information is exempt on the basis that its disclosure would, or would be likely to, prejudice the relations between the UK

and other States and the interests of the UK abroad. Although there is a public interest in knowing about the events and circumstances surrounding Black Wednesday, we consider that the potential prejudice to the relations between the UK and other States and the interests of the UK abroad is such that the public interest in maintaining the exemption is greater in all the circumstances of the case.

Section 29 – the Economy

“The Cost of Intervention” – 10 December 1993

Paragraph 9 of Andrew Holder’s summary refers to other central banks making losses as a result of our borrowings under the Very Short Term Facility (VSTF). We recommend excluding these references under Section 29 – ‘The Economy’, as it could be more difficult to enter into future financial transactions with these banks and others if they could not be sure if details of their transactions would be made public or not. Also, it may be embarrassing for them if we were to disclose the information (although this would not be a reason for not doing so under the FOI Act). The same exemption should cover the same material in the Bank’s paper (paragraph 10 of the overview and paragraphs 16 and 22 of the annex).

In all the circumstances of the case we consider that the potential prejudice to the UK’s economic interests is such that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

“Reflections on the UK’s Membership of the ERM” – 5 January 1994

Paragraph 16 refers to the operational details of the intervention tactics adopted by the Bank of England and suggests that these were “sub-optimal”. The ERM intervention of 1992 was the last substantive foreign currency intervention in the UK and therefore is directly relevant to any future intervention. The Bank remains our agent for intervention and questioning the way it handled the mechanics of September 1992 episode would potentially damage our credibility and effectiveness in future intervention episodes.

In all the circumstances of the above two cases we consider that the potential prejudice to the UK’s economic interests is such that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 35 - Formulation of Government Policy etc.

'The Exchange Rate' – 17 September 1992

This contains references to unpublished June Economic Forecasts. We should exempt these references under Section 35(1)(a) of the FoI Act – 'Formulation of government policy etc'.

Section 35 states that '*information is exempt if it relates to the formulation or development of government policy*'. Clearly, economic forecasts constitute advice and opinion that are highly important in the setting of economic policy. We recommend that you decide that their disclosure would inhibit the free and frank exchange of views and that disclosure would therefore lower the quality of economic policy advice. It is in the public interest to have as high quality economic policy advice as possible in order to inform important and sensitive economic decisions and we consider therefore, in all the circumstances of the case, that the public interest in maintaining the exemption under Section 35(1) of the Act outweighs the public interest in disclosing the information.

TLA have advised that in view of the age of these forecasts it could be difficult to sustain the argument that they should not be disclosed if Ms Newman complains about their non-disclosure. They consider that the Information Commissioner may well take a different view on the application of the public interest test in this case.

'Prospects for Inflation' – 18 September 1992

This is a note from Colin Mowl to the Chancellor. It assesses the prospects for inflation in light of sterling's depreciation following ERM exit. This appears to be a work-in-progress for the inflation forecast that would be provided in the Autumn Statement. We recommend exempting this document in its entirety under Section 35 for the same reasons as stated above.

'ERM Project' – 21 December 1993

In a number of places (e.g. page 30), the paper refers to and quotes numbers from the Treasury's June forecasts. These forecasts were final, but unpublished. We should exempt these forecasts on the grounds they were unpublished for the same reasons as stated above.

Reflections on the UK's Membership of the ERM' – 10 January 1994

Wicks notes in paragraph ii that '*the Bundesbank did not protest too much about the entry rate during the crucial Monetary Committee meeting, though they certainly expressed the view that it was a little on the high side. Others, notably the French, thought it too low.*'

We recommend exempting this comment using Section 27 – ‘International relations’. The Monetary Committee, now the EFC, operates under strict guidelines on secrecy. We would be breaking this agreement if we were to publish this. Several countries have recently joined ERM2, and others are thinking of doing so. Releasing Monetary Committee discussions of the ERM at this time could be viewed with particular disfavour by other EU governments and may inhibit the willingness of other participants in the EFC to engage in discussion with the UK.

- **C: Section 36 exemptions.** Please highlight whether or not a case for an exemption under Section 36 arises.² This relates to the effective conduct of public business and needs to be signed off by a Minister. To do this, you should:

- o Attach the paper or specific sections to be considered under Section 36;
- o Attach an analysis of the relevance of the exemption

Section 36 could be used in relation to references to the Treasury’s unpublished June forecasts in the documents ‘The Exchange rate’, ‘Prospects for inflation’ and ‘ERM project’. Section 36 states that *‘information is exempt, if in the reasonable opinion of a qualified person (which for the Treasury means a Minister) its disclosure would (be likely to)...inhibit the free and frank provision of advice’*. By disclosing forecast information that was not published we would inevitably set a precedent that would make it extremely difficult to withhold similar information in the future. As a result, there are good grounds for arguing that subjecting forecast material to disclosure would jeopardise ‘fair and frank discussion’ of the issues in the future.

However, Section 36 can only be applied if Section 35 has been judged not to apply and both exemptions cannot be used at the same time. In this case therefore, we think Section 35 would be paramount and that Section 36 would therefore be inapplicable.

There are also a number of comments that could potentially be excludable under Section 36, in particular, the part referring to ‘the free and frank exchange of views’. However, in our view, the case for this is not compelling in these instances, especially given the passage of time. These comments include:

² Please ensure you have considered carefully the difference between Section 35, Formulation of Government Policy, and Section 36, Prejudice to the effective conduct of public affairs. Section 35 does not require a decision to be made by a Minister, whereas section 36 does. If you think that section 36 is appropriate you should explain why section 35 does not apply.

'ERM Project'

Page 7

- Para 1 – *'Mrs Thatcher's removal of her veto on ERM membership was determined by her own increasing political weakness..'*
- Para 2 – *'October 1990 was clearly not an optimal time for the UK to join the ERM.'*
- Para 4 – *'..the latter was partly the result of the Government's hype about economic miracles..'*

Page 9

- Para 2 – *'...(and the open warfare between the Chancellor and Prime Minister made it especially difficult for the markets to decide what the effective objectives of the Government were)..'*

Page 13

- *'A paper prepared by Andrew Holder as part of contingency planning before the 1992 General Election..'*

Page 20

- Bottom para – *'The weakening of the economy during the summer of 1990 did not lead the Treasury seriously to question the case for entering the ERM – this was still to go ahead as soon as Mrs Thatcher agreed..'*

Page 31

- Bottom para - *"..the Treasury seems to have played down the relevance of German reunification to the prospects for the UK's ERM membership".*

Page 36

- *'[With reference to the entry rate] The updated charts told a rather different story to those circulated 2½ months earlier; partly because of developments over the period, and partly because the earlier charts had not been fully up to date even when circulated.'*

Page 43

- Bottom para – refers to ‘*Williamson’s malicious innuendo*’ in response to an article by the academic John Williamson.

Page 45

- Bottom para – ‘*Quite apart from the election, the position that “unemployment is a price worth paying”, is one that Ministers find it difficult to defend.*’

Page 47

- Second bullet point - With reference to failure of ERM membership ‘*the Chancellor’s undiplomatic handling of Schlesinger*’ is referred to as a cause.

Page 49

- Third para – ‘*the stamp duty holiday, which had been intended to bring forward a recovery in the housing market, ended up further undermining the confidence that was essential to recovery.*’

Page 58

- Third para – ‘*their [the monetary authorities] restraint convinced the markets – in the light of what happened in 1992 one should perhaps say “duped” – that there was only a small risk of sterling being devalued.*’

Page 78

- Third para – ‘*There is a general problem with fixed exchange rate regimes that Ministers get into positions where regime changes can take place only at enormous political cost. It becomes very difficult for civil servants to recommend (or even think of) measures that they know may well cost their political masters their careers. There is no obvious solution to this problem.*’

‘Reflections on the UK’s Membership of the ERM’ – 5 January 1994

On page 8 of his minute, Gray outlines four conditions he would wish to be met before sterling rejoined the ERM. There are some echo’s here of the EMU assessment, particularly condition iii.

'Reflections on the UK's Membership of the ERM' – 10 January 1994

Paragraph 2i includes some criticism of ministerial actions, with focus on the domestic political handling of ERM entry providing '*an unhelpful and distracting backcloth for our preparations*'. UK attitudes are contrasted unfavourably with those of the French.

- D: **Process** by which decisions have been reached. To complete this section you should:
 - o Give the name of the **Director** who has signed off the draft reply;
 - o State that the Information Rights Unit and Treasury Legal Advisers have been consulted
 - o Whether there are any related requests within the Treasury or outside that you know of (for example if it is a round robin)
 - o If the request has gone to the DCA clearing house

- The draft reply has been signed off by Sue Owen (Director, MPIF).

- IRU and TLA have been consulted.

- Some of the material we propose to release contains details of unpublished economic forecasts. As explained above, we propose to exempt these forecasts under Section 35. This request reads across to Oliver Letwin's Fol request for all '*material concerning the Chancellor's GDP forecasts since 2001 and whether these were deliberately exaggerated or simply mistaken*' (see Peter Matheson's submission of 20 January) and '*Material relating to changes in the way in which the Government assesses whether or not the Chancellor has broken his Golden Rule - on borrowing only to invest over the economic cycle - together with internal assessments of whether and to what extent the Golden Rule has been breached*' (See Nikil Rathi's note of 27 January)