Text of memorandum from Granville Ram, First Parliamentary Counsel.
2nd November 1945

"THE RAM DOCTRINE"
MINISTERS OF THE CROWN (TRANSFER OF FUNCTIONS)

Memorandum by Parliamentary Counsel

I have been asked to write a memorandum upon the question how far legislation is necessary to authorise any extension of the existing powers of a Government Department. It is necessary at the outset to draw a sharp distinction between what is legally possible and what is permissible having regard to established practice, and I therefore deal with each of these aspects of the question in turn.

Legal Position

A Minister of the Crown is not in the same position as a statutory corporation. A statutory corporation (whether constituted by a special statute as, for instance, a railway company is, or constituted under the Companies Acts as in the case of an ordinary company) is entirely a creature of statute and has no powers except those conferred upon it by or under statute, but a Minister of the Crown, even though there may have been a statute authorising his appointment, is not a creature of statute and may, as an agent of the Crown, exercise any powers which the Crown has power to exercise, except so far as he is precluded from doing so by statute. In other words, in the case of a Government Department, one must look at the statutes to see what it may not do, not as in the case of a company to see what it may do. There are, of course, innumerable instances in which statutory powers have been conferred on Ministers and there are frequently questions whether an express statutory provision conferring particular powers does not by implication have a restrictive effect in the field in which those powers have been granted. Whether or not such an implication ought to be drawn in any particular case must always be a question of construction to be determined on the wording of the relevant statutes, but the governing principle is that express statutory provision is not necessary to enable a Minister to exercise functions.

For reasons explained below in paragraphs 3 to 7 of this Memorandum, this question has become bound up with that of expenditure and it is sometimes thought that a Minister's functions are limited to those for which he has been expressly authorised by statute to incur expenditure. This is an inversion of the true position which is that although a Minister may do anything which he is not precluded from doing, he will only be able to pay for what he does if Parliament votes him the money. Nevertheless in statutes conferring statutory power on a Minister it is common to find provisions to the effect that the expenses incurred by him in exercising them shall be defrayed out of moneys provided by Parliament. Such provisions are inserted for two reasons. First, for the purpose of making plain the intention that such expenses shall be paid out of voted money and not out of the Consolidated Fund and secondly, for the purpose of showing that what is contemplated is a permanent annual charge. Moreover, it is also convenient to insert such words in a Bill so that they may be italicised in
order to show what portions of the Bill are required to be supported by a Money Resolution. It is, however, important to appreciate that such provisions as these do not form the statutory authority for the payment of the expenditure concerned and that legally they amount to no more than an expression of intention, because no Parliament is able to bind its successors, or even to bind itself, to vote money in future years. Statutory authority for the payment of expenditure out of moneys provided by Parliament must be, and can only be, given year by year by means of the Votes and the Appropriation Act.

Established Practice

During the period 1920-1930 cases occurred in which Departments obtained money by means of the Votes and the Appropriation Act for expenditure which had not been foreshadowed by any previous legislation, and even, in a few instances, for expenditure in excess of limits which had clearly been contemplated by such legislation. Attention was drawn to these points by the Public Accounts Committee in 1930, 1931 and 1932, and on the last mentioned of these occasions the Report of the Committee, after referring to the practice of the Ministry of Labour of obtaining money by votes for the training and resettlement of the unemployed, which was outside certain powers conferred on the Ministry by statute, went on to say -

"Your Committee consider also, as a matter of general principle, that, where it is desired that continuing functions should be exercised by a Government Department, particularly where such functions may involve financial liabilities extending beyond a given financial year, it is proper, subject to certain recognised exceptions, that the powers and duties to be exercised should be defined by specific statute."

To this the Treasury replied as follows:

"There have been in the past many instances where continuing services which have never been dealt with by statute - some of them of considerable importance - have been provided for with no more permanent authority than that given by an Appropriation Act, and some of those services continue today, without the propriety of the means of providing for them having been called in question. Moreover there may arise, particularly in circumstances such as the present, emergencies which the Government will prefer to provide for ad hoc through the Appropriation Act in the hope that the need for such provision will not be repeated in future years. In such cases My Lords doubt whether any advantage would result from the enactment of specific legislative authority, and it does not appear to Them that in such cases resort to the authority of the Appropriation Act should necessarily be regarded as contrary to orthodox finance. Nevertheless, while They think that the Executive Government must continue to be allowed a certain measure of discretion in asking Parliament to exercise a power which undoubtedly belongs to it, They agree that practice should normally accord with the view expressed by the Committee that, where it is desired that continuing functions should be exercised by a Government Department (particularly where such functions involve financial liabilities extending beyond a given year) it is proper that the powers and duties to be exercised should be defined by specific statute. Their Lordships will, for their part, continue to aim at the observance of this principle."
Again in 1933, the Public Accounts Committee drew attention to the "general principle" enunciated by the Committee of the previous year and referred to "certain further examples of continuing expenditure not covered by specific legislative sanction" and in particular to the fact that the annual Exchequer grant towards police expenditure had "no statutory basis whatever". They went on to say -

"It has been represented that a number of other important services of a continuing nature are supported solely by the authority of the annual Appropriation Act, but in the opinion of Your Committee this circumstance does not furnish adequate ground for the abandonment of attempts to place such expenditure on a constitutional basis".

With all due respects to the Public Accounts Committee it is submitted they were inaccurate both in saying that grants which were authorised only by the Appropriation Act "had no statutory basis whatever" and in describing the changes of practice they desired as "attempts to place such expenditure on a constitutional basis", because for the reasons explained in paragraph 2 above, the Appropriation Act is in law the only possible "statutory basis" for any voted expenditure and the use of the Appropriation Act without previous general legislation however objectionable it may be is not illegal and therefore not unconstitutional. The Treasury, however, did not reply in this sense partly no doubt because to have done so would have seemed like a legal quibble and partly because they were in agreement with the Public Accounts Committee upon the substance of the points they raised. The reply given was contained in Treasury Minute dated 26th January, 1934, of which the relevant extract is as follows:

"My Lords note that the Committee accept generally the assurance which have been given them as regards expenditure which is not covered by the statutory powers of Government Departments. They are aware that there are many items of expenditure, often on a large scale, appearing on Votes from year to year which no other authority exists than the successive Appropriation Acts.

It is of course clearly within the right of Parliament to provide even continuing grants on the authority of the Appropriation Acts, but My Lords concur in the view of the Committee that the power should be used within reasonable limits and They will endeavour to comply with the wish of the Committee that, when it has been exercised to authorise continuing grants, opportunity should be taken to insert regularising clauses in any appropriate legislation which may be in contemplation."

These interchanges between the Public Accounts Committee and the Treasury formed the basis of the practice which has now come to be regarded as established, but it will be noted that on each occasion the Treasury reply was such as to maintain the legal principle intact.
Conclusion

From what I have written above it will be seen that the answer to the question put to me may be summarised as follows:

a. Legislation is not legally necessary to authorise an extension of the existing powers of a Government Department except where such an extension is precluded by a previous statute either expressly or by necessary implication.

b. If the extended powers involve an annual charge extended over a period of years legislation though not required by law, is required by established practice formally recorded in the transactions between the Public Accounts Committee and the Treasury.

It may be added that where the creation of a new office - such, for instance as a new Parliamentary Secretaryship - is involved legislation is not legally necessary unless it is required that the new office holder should sit in the House of Commons, in which case a Bill must be passed unless, of course, there is still in force emergency legislation covering the point.