MT

CONFIDENTIAL FILING

MINISTERIAL RESPONSIBILITY FOR SCRUTINY OF FUTURE PROPOSED POWERS OF ENTRY

GOVERNMENT MACHINERY

S 808

OCTOBER 1982

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~13.12.82~~							
~~21.7.83~~							
~~22.7.83~~							
~~26.7.83~~							
~~27.7.83~~							
4.8.83							

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F E R Butler Esq

WN
4/8

CABINET OFFICE

With the compliments of
The Private Secretary to the
Secretary of the Cabinet

70 Whitehall, London SW1A 2AS
Telephone 01-233 8319

Govt. Mach.

CONFIDENTIAL

70 Whitehall, London SW1A 2AS Telephone 01-233 8310

Secretary of the Cabinet and Permanent Secretary to the Management and Personnel Office

Sir Robert Armstrong GCB CVO

Ref. A083/2397 3 August 1983

Dear John

Scrutiny of Powers of Entry

The Prime Minister has approved new detailed procedures for Ministerial scrutiny of proposals to create or re-enact powers of entry in legislation. The arrangements are described in the attached annex which is also being circulated to Parliamentary Clerks for inclusion in the Guide to Legislative Procedures for the use of staff working on Bills.

Similar procedures for scrutiny by the home Departments apply to proposals to create or re-enact powers of entry in subordinate legislation.

I am copying this letter to the Private Secretaries to Ministers in charge of Departments.

Yours

(R P Hatfield)
Private Secretary

J O Kerr Esq

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SCRUTINY OF POWERS OF ENTRY

1. It is the duty of the Home Office to scrutinise all Bills (public, local or private) for proposals to create or re-enact powers of entry for the police or public officials in England and Wales, and in Great Britain or the United Kingdom as a whole. The Scottish Home and Health Department has a similar duty in respect of exclusively Scottish Bills, and of United Kingdom and Great Britain Bills creating or re-enacting powers of entry exercisable in Scotland. The Northern Ireland Office has a smilar duty in respect of exclusively Northern Ireland Bills and Orders in Council, and of United Kingdom Bills creating or re-enacting powers of entry exercisable in Northern Ireland. References in the procedures below to the Home Departments should be construed accordingly.

2. In their scrutiny of Bills and proposals the Home Departments have the duty of applying the "Mitchell" principles - broadly the need to minimise the constraints and burdens which powers of entry can impose on the owners or occupiers of premises.

3. A Department should not propose new powers of entry in legislation for which it is responsible without the specific agreement of its Ministers.

4. Any proposal for new powers of entry contained in a private Bill should also be referred to Ministers by the Department responsible for considering the Bill.

5. A Department should, after obtaining the agreement of its Ministers, consult the appropriate Home Department or Departments (ie the Scottish Home and Health Department and/or the Northern Ireland Office, as well as the Home Office, for any proposal which would have effect in Scotland and/or Northern Ireland) on any proposal, whether in a public or private Bill, to create or re-enact powers of entry, whether into business or private premises, for the police or public officials. In the Home Department or Departments concerned, a Minister should be consulted in all cases, and before any Government proposal is approved.

6. The Law Officers must also be consulted (through the Law Officers' Department or the Lord Advocate's Department as appropriate) by the Department concerned, if there is any question requiring legal advice in connection with proposals for creating or re-enacting powers of entry.

7. Departments should initiate such clearance of proposals with the Home Departments and, where appropriate, the Law Officers at as early a stage as possible.

8. Proposals for creating new powers of entry should be specifically noted when a memorandum is put to the relevant Cabinet Committee for policy clearance; they should not be included in such a memorandum unless they have been agreed with the appropriate Home Department(s). Any proposals for new powers of entry arising after policy clearance should be cleared in correspondence with the relevant Ministers (members of the Cabinet Committee which gave policy clearance and others concerned), and the correspondence should make clear that the proposals have been approved by Home Department Ministers.

From the Legal Secretary to the Lord Advocate
and First Parliamentary Draftsman for Scotland

MBRM

Norman J. Adamson CB QC

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL
Telephone: Direct Line 01-212 8972
Switchboard 01-212 7676

27th July, 1983

F.E.R. Butler, Esq.,
Principal Private Secretary,
No. 10, Downing Street,
London S.W.1.

Dear Robin,

Scrutiny of New Powers of Entry

Henry Steel has kindly sent me a copy of your letter of 22 July.

In view of the Lord Advocate's existing interest in this matter in relation to powers of entry in Scotland, we have consulted the Scottish Home and Health Department in the light of the Home Secretary's letter of 8 July and your letter. The Lord Advocate is content that the procedures in Sir Robert Armstrong's letter of 22 June, without the modification suggested by the Home Secretary, should apply mutatis mutandis in Scotland, and I have now confirmed with Sir William Fraser that Scottish departments will act accordingly, in line with the Prime Minister's wishes as set out in your letter.

Copied to the recipients of your letter of 22 July, and to Sir William Fraser.

Yours sincerely,
Norman Adamson.

N.J. ADAMSON

Govt. Rock.
Ministerial Responsibility
Sorting new papers of
entry
Oct. 82.

With the Compliments
of

The Permanent Under Secretary of State

Scottish Office

Sir William Fraser KCB

Dover House
Whitehall
London SW1A 2AU
01-233 8229 or 7602

New St. Andrew's House
Edinburgh EH1 3SX
031-556 8400

NBPM

FROM THE PERMANENT UNDER-SECRETARY OF STATE, SCOTTISH OFFICE
Sir WILLIAM FRASER KCB

NEW ST. ANDREWS HOUSE
ST. JAMES CENTRE
EDINBURGH EH1 3SX
Telephone 031-556 8400

26 July 1983

RESTRICTED

Sir Brian Cubbon KCB
Permanent Under Secretary of State
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

Dear Brian,

I refer to Robert Armstrong's letter of 22 June about new powers of entry.

We, and our Ministers, were content with the revised procedures for scrutinising new powers of entry when they were last proposed and would be happy for them to be introduced now. The Scottish Law Officers have also agreed to this proposal.

We have now seen the Home Secretary's letter of 8 July to the Attorney General, and are content with his suggested amendment to paragraph 5 of the proposed procedures attached to Robert Armstrong's letter.

I am sending copies of this letter to Robert Armstrong, Henry Steel and Robin Butler and to Norman Adamson in the Lord Advocate's Department.

Yours ever,

Kedd.

Govt Machinery
: Min Respon for Scrutiny of
Powers of Entry Oct '82

file

10 DOWNING STREET

From the Principal Private Secretary

22 July 1983

SCRUTINY OF NEW POWERS OF ENTRY

The Prime Minister has seen the Attorney General's letter of 20 June to the Home Secretary. She has also seen the Home Secretary's reply of 8 July together with Sir Robert Armstrong's letter of 22 June to Sir Brian Cubbon and the letter of 20 July to me from the Lord Advocate's Private Secretary.

The Prime Minister is content that the responsibility for scrutiny of new powers of entry should now be transferred to the Home Office. She is content with the proposed procedures attached to Sir Robert Armstrong's letter of 22 June, and would wish that they should not be modified on the lines proposed in the final paragraph of the Home Secretary's letter. She regards the arrangement that each case should be authorised personally by a Minister as an essential element in the arrangements to limit new powers of entry.

I am sending copies of this letter to the Private Secretaries to the Home Secretary, the Secretary of State for Northern Ireland, the Secretary of State for Scotland, the Secretary of State for Trade and Industry, and Sir Robert Armstrong.

E. E. R. BUTLER

Henry Steel, Esq., C.M.G., O.B.E.,
Attorney General's Office.

PRIME MINISTER

Scrutiny of new powers of entry

You will recall that, with the aim of limiting proposals for new powers of entry, there are arrangements that every case should be scrutinised by a Minister - hitherto the Solicitor General.

Before the Election there was a proposal that this responsibility should be transferred from the Solicitor General to a Home Office Minister. The Home Secretary, the Attorney General and Sir Robert Armstrong were in favour of this, but Sir Ian Percival opposed it; and you decided to leave things as they were while Sir Ian Percival was Solicitor General. But you authorised me to send a private minute to Sir Robert Armstrong saying that you would reconsider the transfer to a Home Office Minister when there was a change of Solicitor General.

The Attorney General has now proposed that the responsibility should be transferred to a Home Office Minister. Sir Robert Armstrong supports this, proposing that the procedures should be on the lines attached. The Home Secretary has also agreed - letter at Flag A - with the gloss that there is no need for every case to be automatically referred to a Minister.

I suggest that you now agree to the transfer, but insist that each case should be personally authorised by a Minister. This was an essential part of the procedures to limit new powers of entry and, if the Home Office were allowed to get away with their comment, I suspect that we would soon get back to the position in which new powers of entry were regularly approved at official level instead of receiving Ministerial scrutiny in each case.

Agree? Yes

MT

F.E.R.B.

21 July 1983

Scrutiny of Powers of Entry - Proposed Procedures

1. It should continue to be the duty of the Home Office to scrutinise all Bills (public, local or private) for proposals to create or re-enact powers of entry for the police or public officials in England and Wales, and in Great Britain or the United Kingdom as a whole. The Scottish Home and Health Department should have a similar duty in respect of exclusively Scottish Bills, and of United Kingdom and Great Britain Bills creating or re-enacting powers of entry exercisable in Scotland. The Northern Ireland Office should have a similar duty in respect of exclusively Northern Ireland Bills and Orders in Council, and of United Kingdom Bills creating or re-enacting powers of entry exercisable in Northern Ireland. References in the procedures below to the Home Departments should be construed accordingly.

2. In their scrutiny of Bills and proposals the Home Departments should have the duty of applying the "Mitchell" principles - broadly the need to minimise the constraints and burdens which powers of entry can impose on the owners or occupiers of premises.

3. A Department should not propose new powers of entry in legislation for which it is responsible without the specific agreement of its Ministers.

4. Any proposal for new powers of entry contained in a private Bill should also be referred to Ministers by the Department responsible for considering the Bill.

5. A Department should, after obtaining the agreement of its Ministers, consult the appropriate Home Department or Departments (ie the Scottish Home and Health Department and/or the Northern Ireland Office, as well as the Home Office, for any proposal which would have effect in Scotland and/or Northern Ireland) on any proposal, whether in a public or private Bill, to create or re-enact powers of entry, whether into business or private premises, for the police or public officials. In the Home Department or Departments concerned, a Minister should be consulted in all cases, and before any Government proposal is approved.

6. The Law Officers must also be consulted (through the Law Officers' Department or the Lord Advocate's Department as appropriate) by the Department concerned, if there is any question requiring legal advice in connection with proposals for creating or re-enacting powers of entry.

7. Departments should initiate such clearance of proposals with the Home Departments and, where appropriate, the Law Officers at as early a stage as possible.

8. Proposals for creating new powers of entry should be specifically noted when a memorandum is put to the relevant Cabinet Committee for policy clearance; they should not be included in such a memorandum unless they have been agreed with the appropriate Home Department(s). Any proposals for new powers of entry arising after policy clearance should be cleared in correspondence with the relevant Ministers (members of the Cabinet Committee which gave policy clearance and others concerned), and the correspondence should make clear that the proposals have been approved by Home Department Ministers.

NBPM

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone: Direct Line 01-212 -0100
Switchboard 01-212 7676

20th July, 1983

The Principal Private Secretary to
The Prime Minister,
10 Downing Street,
London S.W.1.

Dear Private Secretary,

SCRUTINY OF NEW POWERS OF ENTRY

You wrote to Mr. Nursaw (then of the Law Officers' Department) on 13th December 1982 concerning Sir Robert Armstrong's proposals, as set out in his minute of 6th October of that year, for a revision of procedures for scrutiny of new powers of entry.

The Prime Minister's decision was that for the time being there should be no change.

The Attorney General subsequently wrote (on 20th June) to the Home Secretary proposing that the time for change had now come.

The Scottish Law Officers wish to endorse that proposal. They entirely agree that the responsibility for scrutiny of new powers rests somewhat uneasily with the Law Officers and it appears to them that the procedures proposed by Sir Robert Armstrong are now more appropriate.

I am copying this letter to the Private Secretaries to the Home Secretary, the Secretary of State for Northern Ireland, the Secretary of State for Scotland, the Secretary of State for Trade and Industry, to the Legal Secretary to the Law Officers and to the Private Secretary to Sir Robert Armstrong.

Yours sincerely,

Christine M. Duncan

Private Secretary

South Mach! Scrutiny powers of entry

QUEEN ANNE'S GATE LONDON SW1H 9AT

8 July 1983

Dear Michael,

SCRUTINY OF NEW POWERS OF ENTRY

Thank you for your letter of 20 June proposing that responsibility for the scrutiny of proposed new powers of entry in primary and subordinate legislation should pass to the Home Office. I have also seen Robert Armstrong's letter of 21 June to Brian Cubbon.

I should be very ready, subject to the views of the Prime Minister, for the Home Office to take this on. As you know, we are already actively involved in this area, and I think there is much to be said for concentrating this work in the policy rather than the Legal Departments.

I propose that we should in general follow the proposed procedures attached to Sir Robert Armstrong's letter. My only reservation concerns paragraph 5 which provides for automatic reference to a Minister in the case of all Government proposals. I am not sure the guide to legislative procedure need lay down in such detail how we should conduct our scrutiny, and I am confident that we can achieve internal arrangements which ensure appropriate Ministerial oversight with no less rigorous scrutiny. I would therefore prefer to see the final sentence of paragraph 5 read "In the Home Department or Departments concerned appropriate Ministerial oversight of powers of entry will be maintained".

Yours

Leon

The Rt Hon Sir Michael Havers, QC, MP

20 JUN 1985

F E R Butler Esq

Let us await the comments of the Home Office

FERB

23.6.

CABINET OFFICE

With the compliments of

Sir Robert Armstrong GCB, CVO

Secretary of the Cabinet

and Permanent Secretary to the

Management and Personnel Office

70 Whitehall, London SW1A 2AS

Telephone: 01-233 8319

70 WHITEHALL, LONDON SW1A 2AS

01-233 8319

From the Secretary of the Cabinet and Permanent Secretary to the Management and Personnel Office

Sir Robert Armstrong GCB CVO

Ref. A083/1778 22 June 1983

I see that the Attorney General, in his letter of 20 June to the Home Secretary, has proposed that we should now put into effect the arrangements for scrutinising new powers of entry which were proposed in my minute of 6 October 1982 to the Prime Minister.

For my part, I should certainly endorse this proposal.

I presume that the procedures would then be on the lines of the annex to my minute of 6 October, as amended by my minute of 16 November. I attach for convenience a copy of the proposed procedures as so amended.

I am sending copies of this letter to Kerr Fraser, Henry Steel and Robin Butler.

ROBERT ARMSTRONG

Sir Brian Cubbon KCB

file KG

10 DOWNING STREET

From the Principal Private Secretary

MR. HATFIELD
CABINET OFFICE

SCRUTINY OF NEW POWERS OF ENTRY

As you will know, the Attorney General sent the Prime Minister a copy of his letter of 20 June to the Home Secretary. I will await Sir Robert Armstrong's advice before raising this issue again with the Prime Minister.

E. E. R. BUTLER

21 June 1983

MR

With the compliments of

the Attorney-General

Attorney General's Chambers,
Law Officers' Department,
Royal Courts of Justice,
Strand. W.C.2A 2LL

01 405 7641 Extn. 3201

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

20 June 1983

The Rt Hon Leon Brittan QC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON S W 1

Dear Leon.

SCRUTINY OF NEW POWERS OF ENTRY

Your Department will be aware of the Report by David Mitchell (then Parliamentary Under Secretary at the Department of Industry) on the objections raised by the National Federation of Self-Employed to existing powers of entry to business premises. As a result the former Solicitor General was given the responsibility for the scrutiny of all proposals in primary or subordinate legislation for new powers of entry. This involved a consideration of policy issues as to the acceptability of such proposals and operated independently of the normal scrutiny already undertaken by your Department.

I was never wholly in favour of a Law Officer, or my Department, being engaged in this work. When the Prime Minister considered this arrangement in December 1982 she concluded, in response to Sir Ian Percival's express wishes, that she would leave matters as they were for the time being. I consider that the time for a change has now come and I propose that your Department should take on this function.

I am copying this letter to the Prime Minister and to Sir Robert Armstrong.

Yours ever. Michael

Gov Machinery
: Ministerial Responsibility
for Scrutiny of Powers of Entry
Oct '82

Gov Machinery

PERSONAL AND CONFIDENTIAL

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10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

SCRUTINY OF NEW POWERS OF ENTRY

I attach a copy of a self-explanatory letter to the Legal Secretary to the Attorney General and Solicitor General.

At the discussion which the Prime Minister held with the Home Secretary, the Attorney General and yourself today she asked me to send you a private minute agreeing that, in the light of the principle mentioned in the first sentence of the second paragraph of my letter to Jim Nursaw, she would reconsider the transfer to a Home Office Minister of the coordinating role now exercised by the Solicitor General if and when there were a change in the holder of that post during her Administration.

E. E. R. BUTLER

13 December 1982

PERSONAL AND CONFIDENTIAL

SUBJECT
cc Harles

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10 DOWNING STREET

From the Principal Private Secretary

13 December 1982

SCRUTINY OF NEW POWERS OF ENTRY

The Prime Minister has now had the opportunity to consider the Solicitor General's minute of 2 December and the preceding papers stemming from Sir Robert Armstrong's minute of 6 October.

The Prime Minister thinks that it is right in principle that the Law Officers and their Department should concentrate on legal advice on matters in respect of which such advice is required, and leave policy issues to the policy departments. The Home Secretary has confirmed that, although he is not eager to add to the burdens of Home Office Ministers, he thinks that the responsibilities in relation to scrutiny of proposals for new powers of entry at present undertaken by the Law Officers could be perfectly well and effectively undertaken by a Home Office Minister; and that he would therefore agree to a transfer if that was the Prime Minister's decision. Nevertheless, the Prime Minister has concluded that the balance of advantage lies in favour of leaving things as they are for the time being, and has decided not to make a change at present.

I am copying this letter to John Halliday (Home Office), Jonathan Spencer (Department of Industry), John Lyon (Northern Ireland Office), Muir Russell (Scottish Office), Christine Duncan (Lord Advocate's Office) and Richard Hatfield (Cabinet Office).

F. E. R. BUTLER

Jim Nursaw, Esq.,
Law Officers' Department

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Home Affairs
cc LOD
CO

HL

10 DOWNING STREET

From the Principal Private Secretary

8 December 1982

Scrutiny of New Powers of Entry

We have arranged for the Home Secretary, the Attorney General and Sir Robert Armstrong to come for a discussion with the Prime Minister at 1430 on Monday 13 December about this subject.

The papers for the meeting will be Sir Robert Armstrong's minutes of 6 October and 16 November to the Prime Minister, and two minutes dated 14 October and 2 December from the Solicitor General to the Prime Minister. Since I do not think that the Home Secretary has received copies of the Solicitor General's minutes I am enclosing copies of these.

I am copying this letter to Jim Nursaw (Law Officers' Department) and Sir Robert Armstrong.

E.E.R. BUTLER

John Halliday, Esq.,
Home Office.

CONFIDENTIAL

Home Affairs

1

BF.

10 DOWNING STREET

RB
Monday 13th
at 14 30.

Prime Minister

I thought that I should warn the Attorney General of your reaction below, and he has asked that he and the Home Secretary might have the opportunity for a word with you.

Shall I fix up a meeting with the Attorney General, Home Secretary and Sir R. Armstrong?

Yes rd

F.E.R.B.

6.12.

PRIME MINISTER

I think we should leave it with the S-G. MT

Scrutiny of New Powers of Entry

This is a tangled story, but the decision is a fairly simple one.

Sir Robert Armstrong minuted you on 6 October proposing that Ministerial responsibility for scrutinising any future proposed powers of entry should be transferred from the Solicitor General to a Home Office Minister. His minute is at Flag A. You were not happy about his proposals and commented that you thought we were trying to reduce powers of entry.

Sir Robert Armstrong also sent a private minute saying that the Attorney General wanted this work transferred away from the Solicitor General so that the Solicitor General could take a larger share of the legal work falling on the Law Officers - Flag B.

The Solicitor General then sent in a comment criticising the arrangement proposed by Sir Robert Armstrong, principally on the grounds that it would end the arrangement that a single Minister has to vet each new proposal himself - Flag C.

Sir Robert Armstrong accepted this criticism, and revised the proposed procedure so that, if the transfer was made, all the proposals for new powers of entry should be expressly and individually cleared with a Home Office Minister, as they are now cleared with the Solicitor General - Flag D.

The Solicitor General has now commented that this is a great improvement but still leaves the question of whether you wish to end his remit and transfer it to a Home Office Minister - Flag E.

There are bound to be new situations arising in which powers of entry are proposed, and the purpose of the procedure is to

/ensure

ensure that any new powers of entry are kept to the minimum by ensuring that they are all considered explicitly by a single Minister. The issue is whether this duty should remain with the Solicitor General or should be transferred to a Home Office Minister. The arguments for transferring them to a Home Office Minister are that the issues are policy ones rather than legal ones and that the Attorney General wants the Solicitor General to be freed of this work (although he is not prepared to say so in writing because of the Solicitor General's reluctance to surrender this responsibility).

So the position is that everybody except the Solicitor General recommends that this duty be transferred to a Home Office Minister: the Solicitor General wants to keep it, but will accept your decision.

Do you agree with the proposal that the duty to scrutinise the proposals for new powers of entry should be transferred from the Solicitor General to a Home Office Minister?

F.E.R.B.

2 December 1982

cf IV

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

PRIME MINISTER

SCRUTINY OF NEW POWERS OF ENTRY

1. Sir Robert Armstrong has kindly sent me a copy of his further minute to you on this subject.

2. The amendments now proposed would introduce into the suggested alternative system the concept of special and personal ministerial responsibility which was central to your remit to me. So you now have the choice of two systems each based on that concept, rather than having to choose between one (the existing one) which is so based, and one (that first proposed) which would have abandoned that concept. I consider that to be a great improvement but it still leaves the all-important question of whether you wish to end my remit and substitute something else for it.

3. I am not entirely clear as to the mechanics of what is proposed. For instance, would all the proposals be vetted by one Home Office Minister and, if so, at which level? Nor do I fully understand the figures given in Sir Robert's paragraph 5. I think that those relate to Bills. Much of my work has been on S.I.s. But I think that those are matters for you rather than me.

I asked this question too: Sir R. Armstrong said that all the proposals would be vetted by a single Minister.

4. As to bringing my remit to an end, here again I recognise, of course, that that is a matter entirely for you. I would, however, just add that I am not aware that any difficulties have arisen in practice. If there have been some that have not been brought to my attention I should be only too happy to discuss with those concerned any suggestions for improving the system. Indeed, if I am to continue, that is in my view the next stage, to take stock of what has been done and of how it might be improved. But it is first for you to decide whether I should continue.

H.

2 December, 1982.

Ref: A082/0124

CONFIDENTIAL

PRIME MINISTER

Scrutiny of New Powers of Entry

The Solicitor General kindly sent me a copy of his minute of 14th October to you, commenting on my minute of 6th October about the arrangements for scrutinising new powers of entry.

2. I take his point that the proposal in paragraph 5 of my proposals, while giving a Home Office Minister responsibility for the arrangements for considering all proposals in the Home Office, would not require the Minister to see every proposal himself. One of the purposes of the arrangements introduced as a result of Mr. David Mitchell's recommendations was to ensure that all proposals for new powers of entry were considered at Ministerial level as well as at official level.

3. As I said in paragraph 6 of my minute of 6th October, the Home Office already scrutinises all new proposals for powers of entry. I have discussed this with the Home Secretary, who is prepared to arrange for all such proposals to be expressly and individually cleared with a Home Office Minister. This will entail some addition to the work-load of the Home Office but such an arrangement will ensure the retention of the concept of special and personal Ministerial responsibility.

4. Paragraph 5 of the proposals would be amended to read:-

"5. A Department should, after obtaining the agreement of its Ministers, consult the appropriate Home Department or Departments (ie the Scottish Home and Health Department and/or the Northern Ireland Office, as well as the Home Office, for any proposal which would have effect in Scotland and/or Northern Ireland) on any proposal, whether in a public or private Bill, to create or re-enact powers of entry, whether into business or private premises, for the police or public officials. In the Home Department or Departments concerned, a Minister should be consulted in all cases, and before any Government proposal is approved."

5. I think that this meets the concern expressed in paragraphs 3 and 4 of the Solicitor General's minute. Because the new arrangements apply to Private Bills, their effect will be that a Home Office Minister will be consulted on about 80 individual proposals a year, compared with the present 20 or so Government proposals which go to the Solicitor General.

6. If the Prime Minister is content, we will circulate the revised guidance as proposed in paragraph 8 of my minute of 6th October.

7. I am sending copies of this minute to the Home Secretary, the Attorney General and the Solicitor General.

RA

Robert Armstrong

16th November 1982

 Prime Minister 2 Mr's 2

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

PRIME MINISTER

1. Sir Robert Armstrong has sent me a copy of his minute to you dated 6th October on the question of the scrutiny of powers of entry and I would like to make the following comments upon it.

2. I regret my delay, but due to a number of factors I did not see it until very recently and of course wished to discuss it with the Attorney General before writing this minute.

3. The essential feature of the present system is that in addition to whatever is done within the Department concerned, every change in powers of entry is vetted personally by one senior Minister outside the Department. The essence of the proposals is the abandonment of that concept of special and personal ministerial responsibility in this field.

4. That follows from the provisions of para 5 of the proposals. The phrase:- "A Home Office Minister will have responsibility for the arrangements for considering all proposals in the Home Office", has been chosen expressly for the purpose of ensuring that such a Minister will not be obliged, nor yet expected, to look at each such proposal himself, and in substitution for a provision included by R.A. in an earlier draft specifically for the purpose of ensuring that he would be so obliged. (It is to be inferred from the correspondence that the result might well be that the Home Office Minister himself would not see more than 5% of such proposals).

5. In my view that, representing a deliberate and significant lessening of Ministerial responsibility in this field - would be a backwards and regrettable step.

6. If you were to decide that that step should nevertheless be taken, the rest of the proposals would I think follow. If, on the other hand, it was your wish to maintain the present type

/and degree

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LONDON, WC2A 2LL

01-405 7641 Extn

and degree of ministerial responsibility, there would still arise the question of whether a Home Office Minister should take it over from me. On that:-

(a) it seems clear from the correspondence that the Home Office would not welcome this additional task for one of its Ministers (and I think that whoever does it one Minister should do it all);

(b) it seems to me that there are at least some grounds for saying that a Law Officer is specially suited and equipped for the task, e.g.,

(i) the traditions and standing of his office must assist him in the performance of the task;

(ii) some of the provisions are so complex that a lawyer of the standing of a Law Officer may have the best chance of spotting the real consequences of what is proposed in each case;

(iii) it seems to me to be in line with the general duties of Law Officers, that the task of calling upon administrators to justify such infringements on the liberties of the subject should be entrusted to and carried out by one of them;

(c) it is implicit in R.A.'s minute that some people take the view that this is not a suitable job for a Law Officer because

(i) it is suggested that "the S.G. is ... taking policy and political decisions rather than giving legal advice" - but of course except where I give the 'go-ahead' I do not take decisions, I simply ask people to justify the measures they propose and if I cannot reach agreement with them they must seek a decision from the appropriate Cabinet Committee;

(ii) that a Law Officer's job is only to give legal advice - but I venture to doubt that;

/(iii) that

01-405 7641 Extn

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LONDON, WC2A 2LL

(iii) that this additional task adds to the load of this Department - but I do not think there is any evidence that this means that other work suffers although it clearly increases the work load of the professional officers.

7. Clearly what is required first at this point is a decision onthe basic issue to which I have referred in paragraphs 3 and 4 above. If you were to decide that the present system should be retained and that I should continue to do this task, I would think this a good point at which to take stock of the position. We have had some 18 months of experiment and I have not heard any suggestion of any serious defects in the system we have evolved. But a tidying up and restatement would I think be timely.

8. I am copying this to Sir Robert Armstrong but not to anyone else. The Attorney General of course has a copy.

H.P.

Law Officers' Department,
14 October, 1982.

J. Nursaw
LEGAL SECRETARY.

LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

14 October 1982

Robin Butler Esq
Principal Private Secretary
Prime Minister's Office
10 Downing Street
LONDON S W 1

Dear Robin,

MINISTERIAL SCRUTINY OF POWERS OF ENTRY

Robert Armstrong minuted the Prime Minister on this on 6 October and copied the minute to the Solicitor General. I very much regret that a series of mishaps here prevented the Solicitor seeing the minute until 12 October. He is unhappy about the proposals contained in the minute and is considering whether he should explain his anxiety in a minute to the Prime Minister. He wishes first to discuss the matter with the Attorney General and their timetables have not yet made this possible. The Solicitor General would be grateful if you could delay submitting the minute to the Prime Minister until I am able to tell you whether he will be putting forward his own views.

I am copying this to Robert Armstrong.

Yours sincerely,

John Nursaw

Home Agg. Rights of Entry, Pt 2

Ref: A09670

CONFIDENTIAL AND PERSONAL

MR. BUTLER

I attach a submission to the Prime Minister about the arrangements for scrutinising proposals for legislation to confer new powers of entry on public officials.

2. There is one piece of background which I mentioned to the Prime Minister when I discussed this with her last January, on the basis of a manuscript note which I sent your predecessor on 5th January, but which cannot for obvious reasons be reflected in this submission.

3. It is not merely officials with the Law Officers' Department who are diverted from their main work as legal advisers in order to carry out this work. The Attorney General feels strongly that he does not get the support he is entitled to expect from the Solicitor General on the ordinary work of the Law Officers; he has said to me that he has to do about 80 per cent of that work himself. One of the reasons which the Solicitor General gives for being unable to play a larger part in the legal advisory work is that he is preoccupied with the function of scrutinising proposals for new powers of entry. This is of course part of a deeper problem in relations between the Attorney General and the Solicitor General, and reflects the Solicitor General's preference for political rather than purely legal responsibility. But the Attorney General would like to be able to ask the Solicitor General to take a larger share of the burden of work falling on the Law Officers and would be helped in doing so if the Solicitor General could be relieved of scrutinising proposals for new powers of entry.

RCA

Robert Armstrong

6th October 1982

CONFIDENTIAL AND PERSONAL

NEW powers of entry?

Prime Minister

You should also see Sir Robert Armstrong's personal minute to me at flag A.

Content with Sir R. Armstrong's proposals if Mr. Whitelaw and Mr. Jenkin agree?

FERB

8.10

Ref: A09660

I thought we were trying to reduce them.

CONFIDENTIAL

PRIME MINISTER

I am not very happy with these proposals.

I spoke to you at the beginning of the year about the arrangements for scrutinising proposals for legislation to confer new powers of entry on public officials.

2. In 1979 the National Federation of Self-employed made a number of objections to the existing provisions for powers of entry of public officials into business premises. You invited Mr. David Mitchell to investigate these objections. One of the recommendations made in Mr. Mitchell's report was that the Law Officers should be asked to scrutinise any future proposed powers of entry. This recommendation was accepted, and the Law Officers have been doing this ever since. I understand that the Solicitor General has been the Law Officer who has undertaken this responsibility.

3. The arrangement has given rise to certain problems. Though proposals for conferring new powers of entry require legislation, and may on occasion raise issues on which specifically legal advice is required, the issues which determine decisions are primarily administrative, policy and political rather than legal. The Solicitor General is in this respect taking policy and political decisions rather than giving legal advice. The work which the Law Officers' Department is asked to do in support of this function is therefore different in kind from the rest of its work; and, as the Department is very small, this work is apt to divert its officers (most of whom are professional lawyers) from their main work in support of the Law Officers in their legal advisory role.

4. The Solicitor General has undertaken this work willingly, and would be content to continue to do so. It is clearly important and valuable that proposals for new powers of entry should be closely scrutinised at political level; and I think that the Solicitor General feels that the present arrangements enable him to supply a degree of close and critical political supervision which the previous arrangements did not provide. With the benefit of hindsight, however, it appears that the Solicitor General may have been given a task which is not strictly appropriate to the Law Officers and for which the Law Officers' Department is not properly resourced.

CONFIDENTIAL

5. I have therefore been examining with the relevant Departments, including the Law Officers' Departments in Scotland as well as in England, alternative proposals for vetting proposals for new powers of entry which would ensure that the "Mitchell principles" were applied, that administrative and political considerations were given due weight, that legal advice was sought where appropriate, and that the work was done by a Department resourced to do it properly without undue diversion of effort from other matters.

6. Proposals for powers of entry are already scrutinised by the Home Office, for local and private Bills as well as for public ones. It would make sense to bring together all the scrutiny responsibilities in one Department which should also be responsible for consulting others as necessary. I think that the Home Office (in Scotland the Scottish Home and Health Department) is the proper location for such a responsibility, and can deal with the policy and administrative issues for which the Law Officers cannot be expected and would not normally be asked to take responsibility.

7. After consultations with the Home Office, the Department of Industry, the Law Officers' Department, the Scottish Office and the Lord Advocate's Department, I should like to recommend the attached proposals for your approval. I believe that the proposals, and specifically the procedures in (3), (5), (6) and (8) provide for proper political supervision at each stage. I understand that the Attorney General, the Secretary of State for Scotland and the Lord Advocate have already indicated that they are content with the proposals, subject to your approval of them. The Home Secretary and Secretary of State for Industry can also be expected to agree. The Solicitor General is not, I think, persuaded of the need for change: he enjoys his involvement in this work, and he feels that the present arrangements provide a necessary degree of explicit Ministerial involvement in decisions about the introduction of new powers of entry. But he will of course accept your decision.

8. If you approved revised procedures on these lines, we should promulgate them in the "Guide to Legislative Procedures" which is currently being revised by the MPO and should be issued to Departments early in the autumn. As this

Guide deals only with primary legislation, a circular would be issued drawing the attention of all concerned to the new procedures and the fact that they were to be applied equally to subordinate legislation. No public announcement of the change would be required; we have never declared that the central scrutiny role was to be exercised by the Solicitor General.

9. I am copying this minute to the Home Secretary, the Secretaries of State for Industry, for Northern Ireland, and for Scotland, the Attorney General, the Solicitor General and the Lord Advocate.

RA

Robert Armstrong

6th October 1982

CONFIDENTIAL

SCRUTINY OF POWERS OF ENTRY - PROPOSED PROCEDURES

1. It should continue to be the duty of the Home Office to scrutinise all Bills (public, local or private) for proposals to create or re-enact powers of entry for the police or public officials in England and Wales, and in Great Britain or the United Kingdom as a whole. The Scottish Home and Health Department should have a similar duty in respect of exclusively Scottish Bills, and of UK and GB Bills creating or re-enacting powers of entry exercisable in Scotland. The Northern Ireland Office should have a similar duty in respect of exclusively Northern Ireland Bills and Orders in Council, and of UK Bills creating or re-enacting powers of entry exercisable in Northern Ireland. References in the procedures below to the Home Departments should be construed accordingly.

2. In their scrutiny of Bills and proposals the Home Departments should have the duty of applying the "Mitchell" principles - broadly the need to minimise the constraints and burdens which powers of entry can impose on the owners or occupiers of premises.

3. A Department should not propose new powers of entry in legislation for which it is responsible without the specific agreement of its Ministers.

4. Any proposal for new powers of entry contained in a private Bill should also be referred to Ministers by the Department responsible for considering the Bill.

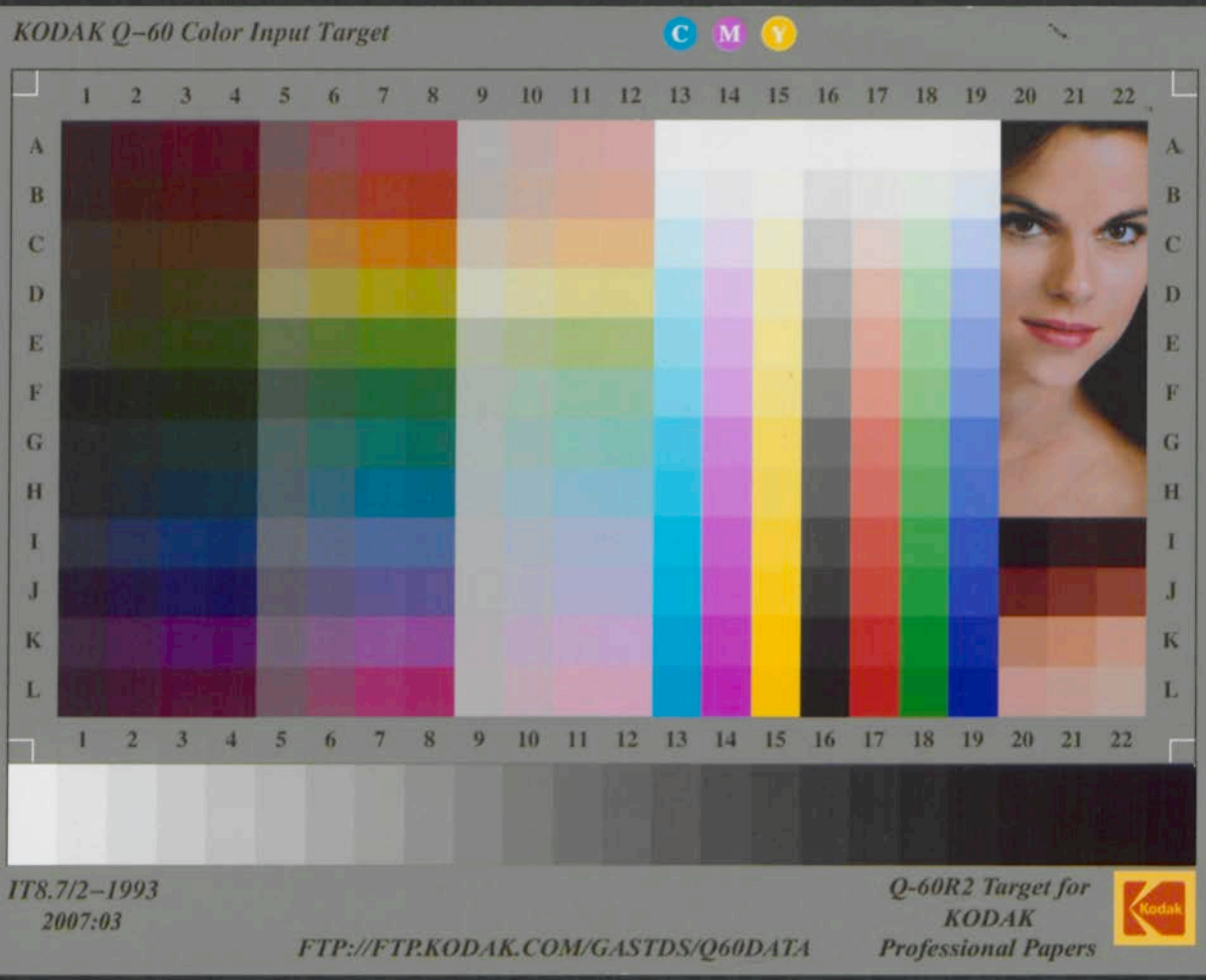
5. A Department should, after obtaining the agreement of its Ministers, consult the appropriate Home Department(s) on any proposal, whether in a public or a private Bill, to create or re-enact powers of entry, whether into business or private premises, for the police or public officials. A Home Office Minister will have responsibility for the arrangements for considering all proposals in the Home Office; similar arrangements will be made in the Scottish Home and Health Department, which will arrange for clearance as appropriate by a Scottish Office Minister, and in the Northern Ireland Office.

6. The Law Officers must also be consulted (through the Law Officer's Department or the Lord Advocate's Department as appropriate) by the Department concerned, if there is any question requiring legal advice in connection with proposals for creating or re-enacting powers of entry.

7. Departments should initiate such clearance of proposals with the Home Departments and, where appropriate, the Law Officers at as early a stage as possible.

8. Proposals for creating new powers of entry should be specifically noted when a memorandum is put to the relevant Cabinet Committee for policy clearance; they should not be included in such a memorandum unless they have been agreed with the appropriate Home Department(s). Any proposals for new powers of entry arising after policy clearance should be cleared in correspondence with the relevant Ministers (members of the Cabinet Committee which gave policy clearance and others concerned), and the correspondence should make clear that the proposals have been approved by Home Department Ministers.

Home Affairs. Rights of Entry, Pt 2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