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European Convention on Human Rights

EUROPEAN POLICY

November 1980

PREM 19/1485

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
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TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
C(80) 66	05/11/1980
CC(80) 40th Meeting, item 8	13/11/1980
H(81) 65	18/11/1981
CC(82) 8th Meeting, item 3	04/03/1982
H(83) 13	17/02/1983
H(83) 14	23/02/1983
H(83) 7th Meeting, item 2	03/03/1983

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 28/1/2014

PREM Records Team

RESTRICTED

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Sir Keith Joseph BT MP
Department of Education and Science
Elizabeth House
York Road
LONDON
SE1 7PH

30 April 1984

Dear Keith

CORPORAL PUNISHMENT

Thank you for copying to me your letter of 12 April to Willie Whitelaw.

As you probably know the legal position regarding corporal punishment is much the same in Northern Ireland as in England and Wales and we issued a consultative document, based on yours, to the various interests there. The reaction was similar to that in England and Wales; most of those who responded criticised the proposed exemptions scheme as unworkable. I also received a Report from the Northern Ireland Assembly supporting corporal punishment in schools and making a number of recommendations. A copy of that Report and a summary of the other comments received has been sent to your Department.

Since the position is similar here and since we would not wish a Northern Ireland case to cause embarrassment for the Government at the European Court of Human Rights, we will seek to introduce legislation for Northern Ireland on the same lines as you propose for England and Wales. A separate Northern Ireland Education Order will allow some account to be taken of local views and we do not have your problem of extending the legislation to certain pupils in independent schools. There are only a few independent schools here and the education and library boards do not normally place children in them. However some children from Northern Ireland are placed in independent special, music and ballet schools in England and Wales and it would probably be preferable for your Bill to extend the exemption arrangements to those children rather than for a Northern Ireland Education Order to seek conditions on schools in England and Wales.

/...

RESTRICTED

Perhaps we could pursue this point when the detailed drafting is under way.

I am copying this to those who received copies of your letter.

KL

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cc AG HO CDL DOE DIEmp LPO NIO LPS CST LCO SO DHSS Trans WO CWO RTA Lord Denham

10 DOWNING STREET

From the Private Secretary

17 April 1984

PL + S/S's letter

The Prime Minister has seen a copy of your Secretary of State's letter of 12 April to the Lord President about corporal punishment in schools. Subject to the views of colleagues, the Prime Minister agrees with your Secretary of State that within the limits set by the European Court of Human Rights schools should still be given the right to choose whether they wish to use corporal punishment. She has noted that legislation to this effect is likely to be very controversial.

I am sending copies of this letter to the Private Secretaries of the recipients of yours.

David Barclay

Miss C E Hodkinson
Department of Education and Science

LO7

Prime Minister (2)

Sir Keith sees a difficult time ahead on corporal punishment in schools. Content with the line at X overleaf, subject to colleagues?, and despite the problems which Sir Keith discusses?

DEPARTMENT OF EDUCATION AND SCIENCE
ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH
TELEPHONE 01-928 9222
FROM THE SECRETARY OF STATE

12 April 1984

Dear Willie.

CORPORAL PUNISHMENT

DMB 16/4

As I mentioned to you recently, we have been studying reaction to the consultative document issued jointly last Summer by this Department and the Welsh Office Education Department on the use of corporal punishment in schools. The document, you will recall, expressed our intention to allow maintained schools in England and Wales to retain corporal punishment as a sanction but, in order to comply with a judgment of the European Court of Human Rights in 1982, undertook to give parents the right to exempt their children from such punishment.

The primary purpose of the document was to seek views on the practical implications of an exemptions scheme. As I anticipated, the scheme was criticised on the grounds that having two kinds of pupils in a school - those who can be given corporal punishment and those who cannot - will cause difficulties. Indeed, the criticism was so strong that I suspect that many schools will not give the scheme even a chance to get off the ground; they will sidestep the legislation by banning corporal punishment altogether.

On the basis of replies to the consultative document and of informal soundings, and bearing in mind that a number of local education authorities have already banned corporal punishment in schools throughout their areas, an informed guess would be that, even before the legislation took effect, the sanction would have been withdrawn except in a small minority of schools. So, for the sake of a comparatively small number of institutions (possibly five to ten per cent), we would be taking through the House a Bill which even some of our supporters will attack on the grounds of impracticality.

/My own

The Rt Hon Viscount Whitelaw PC CH MC
Lord President of the Council
68 Whitehall
London SW1A 1AT

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My own views on this are unchanged. I believe that the public at large is not opposed to corporal punishment in schools and that, within the limits set by the European Court of Human Rights, we should give schools the right to choose whether they wish to use it or not. We shall be criticised for bringing in the scheme but it seems to me that we should be even more criticised if we actually banned the practice, removing all choice. I felt, however, that I should warn colleagues that we can expect the Bill to receive a stormy reception next Session, and at the end we could see corporal punishment disappear from all but a minority of maintained schools. I am more sanguine about being able to leave independent schools with a free choice on this issue, because for these schools our intention is to confine the impact of exemption arrangements to those children who are placed there by local education authorities or through the Assisted Places or similar Schemes.

I am copying this to the Prime Minister, members of H Committee, the Attorney General and Sir Robert Armstrong.

Yours ever,

Keith.

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SECRETARY OF STATE
FOR
NORTHERN IRELAND

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

The Rt Hon Sir Keith Joseph Bt MP
Secretary of State for Education and
Science
Elizabeth House
York Road
LONDON SEI 7PH

28 July 1983

Dear Keith

CORPORAL PUNISHMENT IN SCHOOLS

Thank you for copying to me your letter of 18 July to Willie Whitelaw.

You say that you cannot see any real possibility of avoiding legislation for England and Wales. There seems to me to be little prospect of getting agreement to implement a non-statutory system of exemptions in Northern Ireland either, particularly in view of the proportionately large number of voluntary schools here. I therefore consider that legislation will be necessary for Northern Ireland and I support your view that the consultative paper should refer to the proposal to legislate.

I am copying this letter to recipients of yours.

Yours

NH

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Euro Pol
Nov '80
Human Rights

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

26 July 1983

The Rt Hon Sir Keith Joseph Bt MP
Secretary of State for Education and Science

Dear Keith

27/7

CORPORAL PUNISHMENT IN SCHOOLS

Thank you for your letter of 18 July about the draft consultative document on corporal punishment. I am grateful to you for explaining why you think a commitment to legislate can no longer be avoided, and I feel sure the Committee understands your position.

I am less happy about the assisted places scheme. As you say, it is difficult to weigh the risk that some independent schools may wish to withdraw from the scheme rather than have exemption forced upon them. But I see from George Younger's letter to you of 21 July that he thinks the risk is considerable and that the effect on the scheme could be disastrous. I have now seen your further letter of 25 July to George Younger. I understand that he now accepts that you should include the wording of paragraph 10 of the consultative document which you proposed in your letter of 18 July. You may now take it that you now have H Committee's approval to publish the consultative document.

I am sending copies of this letter to the Prime Minister, to members of H Committee, to the Foreign Secretary, the Attorney General, the Lord Advocate and to Sir Robert Armstrong.

Yours

EURO POL: Human Rights: Non [illegible]

Educ. Pol.

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

2617

25 July 1983

Dear George,

Thank you for your letter of 21 July about the consultative document on corporal punishment.

We discussed briefly today the question of assisted places. I have, as agreed, looked at this again, but I am still of the view that the wording of paragraph 10 of the consultative document should be as proposed in my letter of 18 July. I am grateful to you for agreeing to my going ahead with publication on this basis.

Copies of this go to recipients of yours.

Yours,

Ken

Rt Hon George Younger TD MP
Secretary of State for Scotland
Scottish Office
Dover House
Whitehall SW1A 2AU

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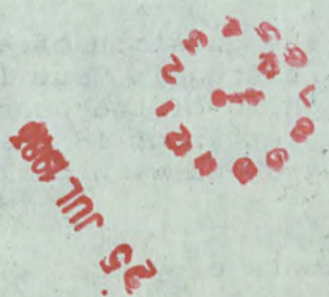
on Human Rights



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

CONFIDENTIAL

The Rt Hon Sir Keith Joseph Bt MP
Secretary of State for Education and Science
Elizabeth House
York Road
LONDON
SE1 7PH

21/7

21 July 1983

Dear Keith,

Thank you for copying to me your letter of 18 July to the Lord President of the Council about your draft consultative document on corporal punishment.

I do agree with your interpretation of the Law Officers' revised Opinion and that there is a risk that a parent wishing to take advantage of the assisted places scheme and finding that schools in the scheme will not respect his philosophical conviction against corporal punishment, could successfully argue to the European Court of Human Rights that the United Kingdom was thereby failing to comply with the European Convention. I believe, however, that that risk is to be preferred to the alternative of taking action to ensure that, in relation to assisted places, parents must have the option to have their children exempted from corporal punishment.

I do not think that the risk of schools withdrawing from the assisted places scheme rather than accept conditions concerning their disciplinary methods should be underestimated. Moreoever it appears to me that the alternative wording you propose for paragraph 10 of your consultative document would be interpreted as a commitment on the part of the Government to take action in relation to corporal punishment of pupils in assisted places. If, following from the consultations, there is then a significant withdrawal of schools from the scheme it would, in my view, be very difficult for the Government to retract and the effect on the assisted places scheme could be disastrous.

I would very much prefer to take no action in relation to the assisted places scheme but clearly we must be in concert since, unlike the position in the public sector, it would be impossible to argue that different considerations allowed

for different solutions in Scotland and in England and Wales. If you can accept my position then no mention of the assisted places scheme need be made in the consultative document. If, however, you feel unable at this stage to go along with that I suggest you should say merely that the position with regard to the assisted places scheme is still under consideration. We should then discuss the matter again in 'H' Committee.

I am copying this letter to the recipients of yours.

Yours ever,

George.

EURO POL: Human Rights
NN. 80

21 JUL 1983

DEPARTMENT OF EDUCATION AND SCIENCE
ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH
TELEPHONE 01-928 9222
FROM THE SECRETARY OF STATE

18/7

18 JULY 1983

Dear Willie.

CORPORAL PUNISHMENT IN SCHOOLS

Thank you for your letter of 5 July about the draft consultative document on corporal punishment.

The issue raised by the Lord Chancellor - that the legislation should be drafted so as to keep to a minimum the burden on the Courts and the legal aid fund - is important and to my mind poses no problem of principle.

As to your reference to the H Committee's meeting at which there was some discussion about whether or not we should commit ourselves to legislation, I believe our common objective was to leave options open for as long as possible. In fact, as I explained in a subsequent letter, I was able to escape altogether writing to Strasbourg as had been envisaged, and in large measure this achieved our objective. But in my view we cannot any longer avoid a commitment to legislate.

In England, at least, legislation is inevitable. I cannot see any real possibility of agreement to a voluntary system of exemptions, and even if I did we would still need to provide a legal remedy for parents to cover those instances where, for one reason or another, the system broke down. I note that George Younger has in mind legislation at some stage to cap his voluntary scheme, and he is following the line of abolition. The retention of corporal punishment elsewhere in the UK makes any voluntary scheme that much more difficult. As the consultative document makes plain, there is a complexity about even a legislated solution; working outside a legal framework would lack credibility both here and in Strasbourg.

/What I

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
68 Whitehall
London SW1A 2AT

What I have in mind all the time is the need to demonstrate to Strasbourg that we are serious in our intention to act following the judgment in the Campbell and Cosans case, which issued seventeen months ago. Unless we can soon convince Strasbourg of our good intentions, we shall increase the risks surrounding the other English cases of corporal punishment. My conclusion, therefore, is that in the consultative document we must commit ourselves to legislation.

Moving on to the Assisted Places Scheme, this has now, of course, been covered by the Law Officers' revised Opinion. That revision seems to me to say that if a child is prevented from taking up an Assisted Place because of a parental philosophical conviction against corporal punishment, then there may be a breach of the European Convention on Human Rights if the State cannot provide a suitable alternative. I am sure that our position would quickly be tested by a case brought before the Commission and subsequently the Court; and the risk of an adverse finding would be high, given the difficulty of demonstrating that a place in a maintained school was a sufficient alternative to an Assisted Place, and given the hostile atmosphere in which the case would be heard. We are the more vulnerable for having, rightly, presented the scheme as offering opportunities not available in the maintained sector.

If an adverse finding could be confined to the narrow issue of the Assisted Places Scheme, the risk might be worth taking. My fear, however, is that the Court might use the opportunity to pronounce on the wider matter of corporal punishment itself, and so bring pressure on us to abolish it altogether. I hope that our exemption arrangements generally will be sufficiently robust to reduce to a minimum the corporal punishment cases coming before the Commission (and the Court). For these reasons I believe that we cannot simply ignore the Assisted Places problem.

I accept that the extension of the exemption arrangements to Assisted Places carries with it a different kind of risk - that some independent schools may wish to withdraw from the Scheme rather than have exemption forced upon them. It is difficult to weigh the risk and I suggest that, at the same time as the consultative document issues, the Independent Schools Joint Council should be separately consulted on this issue.

Paragraph 10 of the main consultative document might then read as follows:

> "Independent schools will be largely unaffected by the proposed legislation: parents who send their children to schools outside the maintained system generally do so by exercising choice. However, legislation will impose exemption obligations in relation to (a) local authority placements in independent schools (including places in independent schools for children with special educational needs); (b) places in non-maintained special schools; and (c) places in the Music and Ballet Scheme. In relation to the Assisted Places Scheme, the Government will consult separately the interests directly concerned."

/The reference

The reference to the Assisted Places Scheme in the final paragraph of the document would be deleted.

As the revision implies, the Law Officers' advice on the Music and Ballet Scheme has led me to believe that, because the schools involved offer specific opportunities which are not available within the maintained system, they must be brought within the exemption arrangements. I have taken it that Michael Havers' letter does not affect LEA placements, and that they too must be within the arrangements.

Copies of this letter go to the recipients of yours. I should be grateful for comments as soon as possible. It is now important to publish the consultative document before the Recess.

Yours,

Keith.

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on Human Rights

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

5 July 1983

The Rt Hon Sir Keith Joseph MP
Secretary of State for Education and Science

Dear Keith

CORPORAL PUNISHMENT IN SCHOOLS

Thank you for your letter of 22 June, in which, as agreed at the meeting of H on 3 March, you ask for comments on a draft consultative document on corporal punishment in schools. I see from Jim Prior's letter of 30 June that he proposes to prepare a separate Northern Ireland version of it; no doubt he will ensure that colleagues' comments are taken into account when it is prepared.

When the Home and Social Affairs Committee on 3 March discussed corporal punishment in schools, it was said that there was no need at this stage to give any commitment to legislation, so I wonder if it is right that your draft should explicitly do so? George Younger, in his letter of 29 June, also points out that it was agreed that the document should not raise the problem of assisted places in independent schools, and I imagine you will in any case wish to reconsider those parts of the draft in the light of the revised opinion from the Law Officers.

No doubt you will in due course ensure that, in order to meet the Lord Chancellor's concern about the legal aid fund, the remedy for a breach of the exemption arrangements is the minimum necessary for us to comply with the judgment of the Court of Human Rights.

I am sending copies of this letter to the Prime Minister and the other recipients of your letter.

Yours

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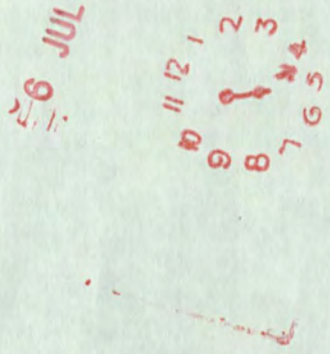
European Convention
on Human Rights
Nov. 1980.



NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

JF
1/7

The Rt Hon Keith Joseph Bart MP
Secretary of State for Education and
Science
Elizabeth House
York Road
LONDON SE1

30 June 1983

Dear Keith

CORPORAL PUNISHMENT IN SCHOOLS

Thank you for sending me the draft of the consultative document with a copy of your letter of 22 June to Willie Whitelaw.

As it stands, the draft would not be really appropriate to Northern Ireland because of certain differences in terminology and background. While these differences are not substantial, nevertheless, a considerable number of additions or amendments would be needed throughout the document, and I think in the circumstances that it would be preferable for us to prepare a separate paper for use in Northern Ireland. This paper will, however, otherwise be based largely on the text of your own paper and I assume you would have no objection to that.

I am copying this letter to the Prime Minister, the Lord President, the Foreign and Commonwealth Secretary, the Lord Chancellor, the Home Secretary, the Secretaries of State for Scotland, Wales and Health and Social Services, the Leader of the House of Commons, the Chief Secretary, the Attorney-General, the Lord Advocate and Sir Robert Armstrong.

Yours

Jim

SMH

EURO Por: Human Rights
Nov '80

NEW ST. ANDREWS HOUSE
ST. JAMES CENTRE
EDINBURGH EH1 3SX

The Rt Hon Sir Keith Joseph Bt. MP
Secretary of State for Education and Science
Elizabeth House
York Road
LONDON SE1 7PH

29 June 1983

Dear Keith,

Thank you for copying to me your letter of 22 June to the Lord President of the Council covering the draft of a consultative document on corporal punishment in schools which you propose to issue in England and Wales. I am in general content with this draft.

However, I note that, whilst H Committee agreed in March that your consultative document should not, pending further consideration of the point by the Law Officers, raise the special problem of Assisted Places at independent schools, the draft in fact refers to this at paragraph 2 and, in more detail, at paragraph 10. If you wish to issue the paper quickly, before the Law Officers give us their further views, these passages will have to be deleted from the paper. Alternatively you may prefer to await the Law Officers' advice and further discuss the matter in H Committee as necessary.

As I said in my earlier letter of 25 March I should be grateful for as much advance notice as possible of the date of issue of your consultative document so that I can make my statement simultaneously on the Scottish position.

I am copying this letter to the Prime Minister and other recipients of your letter.

Yours ever,

George

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

CONFIDENTIAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

29 June, 1983

Dear Kenneth.

CORPORAL PUNISHMENT IN SCHOOLS

I refer to your letter of 22 June to the Lord President of the Council inviting comments on the draft consultative document.

It was agreed in March that the advice in relation to the Assisted Places Scheme in paragraph 9 of the Opinion which I gave jointly with the Lord Advocate (Annex A to H(83)13) should be considered further.

I and the Lord Advocate have now agreed that paragraph 9 of that Opinion should be replaced by the following:-

> "It is, however, advisable for the Government to ensure that where a school offers a place for a child under the assisted places scheme, should the parents' philosophical convictions not be respected if they accepted that offer, education could nevertheless be provided by the State which did meet those convictions and which took account of the considerations set out in the second paragraph of the advice given above under the heading "Provision of Separate Schools in which Corporal Punishment is not Practised"."

I have not seen details of the Music and Ballet Schemes, but the principle to be applied is that suitable provision must be made in the public sector, or at public expense, affording the parent concerned an option which meets their philosophical convictions.

/I

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ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

I suggest that paragraphs 10 and 21 of the draft consultative document be considered further in the light of the above.

I am sending copies of this letter to the recipients of yours.

Yours ever.
Michael

The Rt Hon Sir Keith Joseph, Bt, MP
Secretary of State for Education and Science
Department of Education and Science
Elizabeth House
York Road
London SE1 7PH

EURO POL: Human Rights

Nov. 80.

HOUSE OF LORDS,
SW1A 0PW

With the
Lord Chancellor's Compliments

CONFIDENTIAL

HOUSE OF LORDS,
SW1A 0PW

24 June 1983

The Right Honourable
Sir Keith Joseph, Bart., MP.
Secretary of State for
Education and Science
Elizabeth House
York Road
London S.E.1

My dear Keith: Corporal Punishment in Schools

Thank you for copying to me your letter of 22nd June to Willie Whitelaw, with the attached draft consultation paper.

I am in general agreement with the line taken in the paper. We must certainly comply with the judgment of the European Court of Human Rights, and I see no reason why we should go so far as to abolish corporal punishment altogether. An exemption system therefore seems to be the obvious solution, and I would myself favour leaving the initiative to parents who object on principle to corporal punishment, despite the problems you mention in paragraph 14.

There is one point of direct concern to me. In paragraph 20 you commit the Government to the view that a breach of the exemption arrangements should be remedied by civil rather than criminal proceedings. This will of course place an additional burden on the courts, and on the legal aid fund. The extent of this burden will be directly proportional to the volume of litigation, and it is difficult if not impossible to assess what

/this may be.

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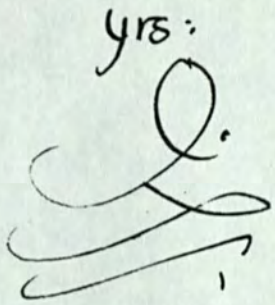
this may be. But I would ask you to ensure that the implementing legislation is so drafted that the civil remedy granted is the minimum necessary for us to comply with the judgment of the Court of Human Rights. I would not wish to see the courts encumbered by proceedings brought by parents who have suffered no real injury, but feel they have a good prospect of extracting damages from the Government in litigation which would most probably be funded by the Government.

I am copying this letter to the Prime Minister and other recipients of your letter of 22nd June.



EUROPEAN POLICY: European Convention on Human Rights: Nov 1980

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22/6.

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

22 June 1983

Dear Willie.

CORPORAL PUNISHMENT IN SCHOOLS

In March H Committee invited me to consult the Ministers concerned on the draft of the consultative document which I was invited to issue about the practical arrangements for giving parents a right to exempt their children from corporal punishment in schools. I now enclose this draft. As it stands, it covers both England and Wales and perhaps Nicholas Edwards could confirm that he is content that it should.

As the committee recognised, this document needs to be issued soon because the sooner it is clear that parents will be given a right of exemption the less the risk of untoward judgments in other cases involving corporal punishment now before the European Commission on Human Rights which would oblige us to abolish corporal punishment in schools altogether. I would, therefore, be grateful if colleagues could let me have any comments by 30 June.

The draft makes no commitment about the timing of the legislation which it foreshadows. As far as I am concerned, there would be no question of legislating in the 1983/84 session.

I am sending copies of this letter and the draft to the Prime Minister, the Foreign and Commonwealth Secretary, the Lord Chancellor, the Home Secretary, the Secretaries of State for Scotland, Wales, Northern Ireland, and for Social Services, the Leader of the House of Commons, the Chief Secretary, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours ever.

Ken.

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
68 Whitehall
LONDON SW1A 2AT

CONFIDENTIAL

CONSULTATIVE DOCUMENT ON CORPORAL PUNISHMENT IN SCHOOLS

1. The United Kingdom, along with twenty-one other European States, is a party to the European Convention on Human Rights, having ratified it in 1951. States which have ratified the Convention undertake to abide by the decision of the European Court of Human Rights (which is established under the Convention) in any case to which they are parties. Last year, in the case of Campbell and Cosans v the United Kingdom, the Court considered the question of corporal punishment in schools. It concluded, despite arguments put on the Government's behalf, that where a parent holds a conviction against punishment of this kind, it amounts to a philosophical conviction which is protected by the Convention.

2. The Court's judgment is binding on the United Kingdom. It means that maintained schools should be required to respect a conviction of the kind mentioned above expressed by the parent of a pupil below the age of majority; and, in certain circumstances (see paragraph 10 below), there may be implications for certain schools which are not maintained. The law does not at present impose such a requirement. Common law in England and Wales regards the teacher of a pupil below age 18 as acting in loco parentis with the result that a teacher who administers moderate and reasonable corporal punishment has a defence against a criminal or civil action for assault. So the Government is obliged by the Court's judgment to change the law in England and Wales as it relates to corporal punishment in schools. This paper outlines the method chosen by the Government to give effect to the Court's judgment in England and Wales and invites comments on the detailed practical application of this method.

Discipline in schools

3. The Government (and the education service) set store by good discipline, which is necessary for the effective working of

schools and as part of the education of individual children. Sanctions, including corporal punishment, form an important aspect of discipline.

4. A distinguishing feature of the teaching profession in this country is the extent to which it concerns itself with the personal and social development of pupils. Schools seek to discharge a pastoral responsibility for every pupil. The Government acknowledge the value and importance of that responsibility and wish to preserve the conditions in which teachers can continue to exercise it.

5. The Government also wish to preserve the balance of responsibilities between local education authorities, school governors and heads. Responsibility for the conduct of a school (including matters of discipline) is determined by a school's articles of government. These generally assign ultimate responsibility for discipline within a school to the governors but also entail some sharing and overlapping of responsibilities involving also the local education authority and the head. Responsibility for day-to-day discipline is primarily assigned to the head. The Government are firmly of the view that, in matters of discipline, the head should have a central role with due discretion, within the law, to deal with problems as they arise.

The chosen method of implementing the Court's judgment

6. In the Government's view, the steps to give effect to the Court's judgment should take account of all the broad considerations outlined in paragraphs 3-5 above and should serve the well-established objectives of the British education system. In addition the method chosen to implement the Court's judgment should be practical. That is, it should be:

a. easy to operate by local education authorities and schools;

b. readily understood by staff, parents and pupils;

c. accessible to parents without undue difficulty.

7. One possible method would be to abolish corporal punishment. The Court was concerned with a parental conviction against corporal punishment and its abolition would automatically ensure that such a conviction was respected. But many parents (and indeed many teachers) in England and Wales favour the continuing availability of corporal punishment. The strength of conviction with which this parental opinion is held has been an important factor in the Government's consideration and they do not propose to abolish corporal punishment in schools in England and Wales.

8. The Government have also decided that the judgment should not be met by the introduction of a system under which all parents would have an unqualified right of access to a school not using corporal punishment. This would be expensive because of the need to provide additional schools so as to maintain existing patterns of choice between different types of school. It would be impractical, particularly in rural areas where choice is already limited by the sparsity of population; and it would be administratively cumbersome because it would complicate the existing procedures for the allocation of pupils to schools.

9. The Government therefore propose to introduce legislation which will oblige a maintained school to enable a parent to exempt a child from corporal punishment. "Corporal punishment" will be widely defined to include slaps and similar physical chastisement, whether formally or informally administered. The definition will cover any action by a member of staff which is intended as bodily punishment.

10. Independent schools will be largely unaffected by the proposed legislation: parents generally have a free choice whether to send their children to schools outside the maintained

system. However, that choice is limited in relation to the Assisted Places and Music and Ballet Schemes and local education authority placements (including placements of children with special educational needs in independent schools and non-maintained special schools). Consequently, the legislation will impose obligations on such schools in relation to assisted pupils and those allocated by a local education authority similar to those on maintained schools.

11. The decision whether to retain corporal punishment in a maintained school as a general disciplinary sanction should, in the Government's view, be a matter for the governors of the school in accordance with the articles of government. That decision will depend on many factors, including the extent to which the parents of pupils at the school exercise the right of exemption and the practical effectiveness of the school's use of disciplinary sanctions other than corporal punishment. Whatever the decision made, and whether it affects all or only some of the children in a school, the removal of corporal punishment as a sanction is likely to affect the maintenance of discipline. The Government believe that parents will recognise this before expressing a choice in favour of exemption, and look to those who do exercise their right to cooperate with the school in the use of alternative sanctions.

The practical application of the exemption system

12. It is necessary, for the purpose of the legislation conferring the right of exemption, to settle some important questions on how a system of exemptions would work in practice in those schools which decided to retain corporal punishment as a disciplinary sanction. The first question is how a parent should register a conviction, so that records can be set up and consulted when the possibility of the use of corporal punishment arises in a particular case.

13. There are three main possible approaches:

(i) to leave the initiative to parents who have a conviction against corporal punishment;

(ii) to leave the initiative to parents who do not object to the use of corporal punishment on their children;

(iii) to seek a formal response from all parents.

14. The first of these would place the onus on those with whom the Court's judgment is directly concerned. It would permit a relatively simple procedure with, in all likelihood, a minimum of record keeping. But from the teacher's point of view, it is open to the objection that the use of corporal punishment would be authorised by the absence rather than the presence of a record. Misunderstanding, clerical errors or the loss of the record could go unnoticed until corporal punishment had been used.

15. The second approach would overcome this difficulty. On the other hand, it would probably involve more records. Error or loss of the record could unnecessarily deprive the school of the use of corporal punishment where the school thought this appropriate. This approach would also mean operating a scheme for the benefit of those opposed to corporal punishment by imposing a positive responsibility on those who were content to leave discretion with the school.

16. The third approach would give the school the clearest picture of parents' views. The absence of a response from a parent could be readily identified (and followed up) by the school, minimising misunderstandings and the possibility of errors. This approach might be of particular benefit to schools during the transition to the new arrangements (see parargraph 19). But it would involve more paper work and again put to trouble parents who were content with the school's disciplinary arrangements.

17. With all three approaches, there is the question of the point at which parental views should be expressed. The most appropriate opportunity would generally be the time of a child's first entry to a school.

18. It would be necessary to allow the parent at any time to register a conviction (or to signify that a previously registered conviction was no longer held). Registering a conviction would be a serious step and parents would be expected to avoid frequent and lightly made changes in this respect. There could be no question, however, of giving a school or local education authority the right to challenge a declared conviction against corporal punishment when it was stated or changed. Nevertheless, in practice, there would need to be some time-gap between the receipt of a parental declaration and the implementation of an exemption. Schools would need a reasonable, though not long, period to record the exemption and to notify all those staff concerned of the changed circumstances.

19. Other difficulties are likely to arise in deciding how an exemption will be claimed and registered when the proposed legislation comes into force. At that date, most pupils will have been on the school roll for some time. Depending on which of the approaches in paragraph 13 above is adopted, the school may need a period in which to cope with the administrative task of canvassing and registering parental convictions.

20. It will also be necessary to decide the precise responsibilities which would be put on (a) local education authorities (and, in the case of aided and special agreement schools, the governing bodies) to organise the introduction of an exemptions system, (b) the governors and head teachers of a school for the effective implementation of the system and (c) other staff, for giving effect to individual exemption claims. In the Government's view a breach of exemption arrangements by a teacher which resulted in the corporal punishment of a child whose parent

had properly claimed an exemption, should be subject to civil rather than criminal proceedings, as should a similar breach of arrangements in a school where corporal punishment had been abolished. (The existing remedies under both the criminal and civil law for the use of immoderate or unreasonable corporal punishment would still be available in all cases.)

21. Comments are invited on paragraphs 12-20 above in relation both to pupils in maintained schools and to pupils involved in the Assisted Places Scheme and Music and Ballet Schemes or local education authority placements, where different considerations, may apply. Responses should be made by 31 October 1983 to Department of Education and Science (Room 4/72), Elizabeth House, York Road, London SE1 7PH (tel 01-928 9222 Extension 2525); or, in the case of Wales: Welsh Office Education Department (Room .....) Cathays Park, Cardiff CF1 3NG (tel (0222) 825111 Extension .....).

Euro. Pol. : Human Rights

11/80

CONFIDENTIAL

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434
My ref: K/PSO/12029/83

Your ref:

20 April 1983

Dear Patrick

Thank you for your letter of 5 April about the nationalisation and leasehold reform cases currently before the European Commission of Human Rights. I am most grateful for your assurances about the present position and about consultations with my Department.

I am sending copies as before.

Yours

TOM KING

The Rt Hon Patrick Jenkin MP

CONFIDENTIAL

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
Telephone *Direct Line* 01-212 3301
Switchboard 01-212 7676

JU401
Secretary of State for Industry

5 April 1983

CONFIDENTIAL

The Rt Hon Tom King MP
Secretary of State
for the Environment
Department of the
Environment
2 Marsham Street
London SW1

11/4

Dear Secretary of State

Thank you for your letter of 24 March 1983.

I am grateful to you for setting out your concern that any concessions in the nationalisation compensation cases now before the Commission could jeopardise the continued defence of the leasehold reform legislation.

There are, of course, important differences, as well as similarities, between the leasehold and nationalisation cases. Moreover, the extent to which concessions on the nationalisation cases might impinge on the leasehold cases will only become clearer when we receive the Commission's opinion on the merits.

As you say, we will not have a clear indication of the Commission's thinking until May at the earliest. Certainly I am not proposing any concessions at this stage. Should the situation change, I will ensure that your Department is consulted.

I am sending copies of this letter to the recipients of yours.

Yours sincerely

Stephen Nicholas

pp PATRICK JENKIN

(approved by the Secretary of State and signed in his absence)

Euro Pol
European Commission
on Human Rights
Nov 1980

11 APR 1983

CONFIDENTIAL

PPTS 3

2 MARSHAM STREET
LONDON SW1P 3EB

01-212 3434

My ref: K/ST/PSO/40299/83
Your ref:

24 March 1983

Dear Secretary of State

EUROPEAN COMMISSION OF HUMAN RIGHTS: NATIONALISATION AND LEASEHOLD REFORM CASES

I am aware that you are under some pressure from back bench colleagues to make concessions to the applicants in the 7 nationalisation cases before the Commission.

It now seems we will not have a clear indication before May at the earliest of which way the Commission may be inclining on the merits of those cases and of the leasehold reform case with which they have been linked. I nevertheless thought that I should record my concern that, if the question of a 'friendly settlement' with any of the nationalisation applicants became imminent, in May or subsequently, the wider implications of any concessions should be very carefully considered. I would wish my Department to be fully involved from the outset in any such consideration.

My immediate concern is, of course, that any concession in the nationalisation cases would make defence of the leasehold reform case - through to the Court if necessary - all the more difficult. It is of the greatest importance that we should win on all aspects of the leasehold reform case as the scope for a compromise in that case seems very small. The applicants are asking for additional compensation, from public funds, not merely for themselves but for all other landlords affected in the past by the leasehold reform legislation. That we estimate might cost in the order of £750 m. In addition the applicants are accordingly asking for the enfranchisement rights of the remaining leaseholders who qualify under the legislation to be taken away or curtailed. As a minimum, they are asking for the valuation provisions to be made less favourable to leaseholders. There may be hundreds of thousands of households involved. The political difficulty of meeting these demands, even in part, would be enormous - not least in Wales. Furthermore there would be direct repercussions on our current right to buy legislation in the Housing and Building Control Bill, under which the right to buy an enfranchisable lease is being granted to public sector tenants whose houses are on leasehold land.

You will appreciate, therefore, my anxiety that nothing should be done which might hamper or jeopardise continued defence of the leasehold reform legislation at Strasbourg. I do of course recognise the political difficulty of continuing to defend in Strasbourg nationalisation legislation which we strongly opposed when it was introduced by the last Labour Government. To an extent, however, we have a similar problem on leasehold reform, as we described the compensation basis as 'confiscatory' when the Leasehold Reform Act 1967 was before Parliament. However, I think we should be able to make clear to our supporters that the only issue at stake in Strasbourg is the strict legal one of whether the legislation

breaches the Convention, not whether we ourselves agree with the legislation.

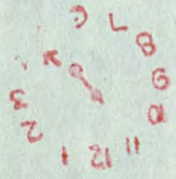
I am sending copies of this letter to the Prime Minister, the Attorney General, the Secretaries of State for Foreign and Commonwealth Affairs, for Wales and for Scotland, the Chancellor of the Exchequer and Sir Robert Armstrong.

Yours sincerely

Helen Ghosh

TOM KING

(approved by the Secretary of State and signed in his absence).



Rt Hon Patrick Jenkin MP

Env. Pol 2

PRIME MINISTER

MG

H Committee

1. United Nations Convention on discrimination against women

At its recent meeting H Committee discussed (minutes attached) the question of whether we should ratify the UN Convention on the "elimination of all forms of discrimination against women". The Committee agreed that there was no alternative to ratification. They did not consider however that the reservations proposed by the Foreign and Commonwealth Secretary went far enough and in particular they were not ready to agree that this country should accept the commitment to search for ways of further reducing discrimination with a view to its eventual elimination. It was agreed that no immediate announcement should be made.

2. Corporal punishment

The Committee discussed the implications of the ECHR case in which the Court had ruled against this country in favour of two Scottish parents who did not wish their children to be subject to corporal punishment. They agreed that the Secretary of State for Education and Science should inform the ECHR that the Government were undertaking consultations on the best way of ensuring that parental convictions on corporal punishment were respected. A consultative document would be issued later in the year with a view to legislation if necessary at some point in the future. They also agreed that the Scottish Secretary should reassert the commitment given by successive Secretaries of State that corporal punishment should be eliminated in Scotland by the end of 1983/84.

TJ.

7 March 1983

E.R.

Env. Pol

4

MS

PRIME MINISTER

H Committee: Corporal Punishment in Scotland

Attached is a note by the Secretary of State for Scotland proposing that he should announce forthcoming legislation to abolish corporal punishment in public sector schools in Scotland following the European Court case which ruled that this country was in breach of the Convention of Human Rights in allowing corporal punishment to be inflicted on pupils whose parents did not wish it. You will recall that this proposal is different from that which Sir Keith Joseph proposes for England; his proposal is that there should be legislation to enable parents to indicate that their children should not be subject to corporal punishment rather than a blanket ban. The Law Officers have advised that there is no barrier to the differences between Scotland and England; depending on one's point of view the difference in approach is either a healthy variation based on differing attitudes North and South of the Border or an example of inconsistency founded largely on differing attitudes in Scottish Office and DES.

TF.

24 February 1983

PRIME MINISTER

Corporal Punishment in Schools

Attached is an H Committee paper by Keith Joseph which makes proposals for the Government's response to the European Court's finding against the UK in the case of two Scottish applicants who do not wish their children to be subjected to corporal punishment at school. This judgment applies only to Scotland but there is no doubt that it would be extended in cases involving English applicants now before the Court. Sir Keith sees no way out of applying the judgement but at the same time he wishes to avoid undermining discipline in schools. He proposes therefore that there will have to be legislation to give parents the right to insist that their child should be exempt from corporal punishment if he or she attends a maintained school. He wishes to issue a consultative document along these lines in April with a view to legislation in the next Parliament.

Such legislation would have considerable implications for the relationship between teachers and pupils and would not be popular with many of the Government's supporters. Sir Keith has, however, obtained the view of the Law Officers that the Court's judgment is binding and in these circumstances he thinks that the proposed course of action is the least damaging.

21 February 1983

CONFIDENTIAL

JH 684

DEPARTMENT OF INDUSTRY
ASHDOWN HOUSE
123 VICTORIA STREET
LONDON SW1E 6RB
TELEPHONE DIRECT LINE 01-212 3301
SWITCHBOARD 01-212 7676

Secretary of State for Industry

25 January 1983

Rt Hon Sir Michael Havers QC MP
Attorney General
Royal Courts of Justice
Strand
WC2A 2LL

Dear Michael,

EUROPEAN CONVENTION ON HUMAN RIGHTS: NATIONALISATION COMPENSATION CASES

Thank you for your letter of 20 January about the conduct of the hearing next week.

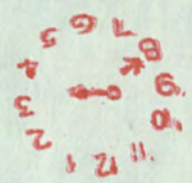
2 Your advice is that we should fight these cases as hard as we can, and I do not disagree. I have been concerned about the way in which aspects of the arguments might rebound upon us, and I have considered the implications as the arguments have developed. I do not doubt that the lines set out in your letter - and particularly perhaps an argument that compensation was adequate within international law requirements if that has to be presented - will provide further ammunition for critics. Nevertheless, so long as we can preserve the distinction that we are arguing about the purely legal question of whether the legislation and what was done under it did or did not involve the UK in a violation of legal obligations under the Convention, we do seem to have some basis for defending the position. I accept that Mr Nicholls, particularly after your own discussion with him, should by now be fully aware of the difficulties and of the need to choose his words with care.

3 I am copying this letter to recipients of your letter, that is to the Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs, the Chancellor of the Exchequer, the Secretaries of State for Scotland and Wales and Sir Robert Armstrong.

Yours ever

Patrick

Euro Pol.
Mss 80.
Euro Commission
on Human Rights



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

20 January, 1983

Dear Patrick.

EUROPEAN CONVENTION ON HUMAN RIGHTS: NATIONALISATION AND LEASEHOLD REFORM CASES

As you know, the European Commission of Human Rights will hold a hearing next week on certain aspects of the above proceedings. The cases in question are seven of the nine that have been brought against us by companies or individuals complaining about the Shipbuilding and Aircraft Industries Act 1977 (the other two applicants having not yet completed their written pleadings) and the group of applications brought by the Trustees of the Grosvenor Estates who arecomplaining about the Leasehold Reform Acts 1967 and 1974.

The initial question whether all these cases are admissible at all will be dealt with by the Commission on the basis of the written pleadings, as will also certain peripheral substantive issues such as whether the arbitration procedure established by the 1977 Act satisfied the "fair trial" provisions of Article 6 of the Convention. But the Commission has identified for oral hearing at this stage certain fundamental substantive issues which it regards as common to all these cases and on which it has therefore invited all the applicants to present a single, common argument and the Government to present a single exposition of its own position. In so far as particular cases present special features in relation to these common issues, there will be an opportunity for the applicants concerned and for the Government to deal with them separately at this hearing.

/Each

Each of the eight applicants whose cases are to be considered at the hearing will, we understand, be separately represented there but they have agreed that the common argument on their behalf will be presented by a single team led by Mr. Anthony Lester QC. We for our part are fielding a strong team of Counsel whom I have personally selected, led by Mr. Donald Nicholls QC. Officials from your Department as well as from the Department of the Environment and the Foreign and Commonwealth Office will be there in support.

Because of the importance of this litigation, and not least because of its political sensitivity, I took a close personal interest, as you know, in the drafting of our written pleadings and I have more recently kept closely in touch with the preparation of our oral submissions for next week's hearing. These preparations are almost complete - though the final stage of pulling the speech together must wait until our team assemble in Strasbourg over the weekend - and I have therefore taken the opportunity to have the benefit of a personal discussion with Mr. Nicholls, in particular about the handling of the politically sensitive matters. It is in the light of that that I am now writing to you and to other interested colleagues to report where we stand and, I hope, to reassure you that the points which are of special concern to all of us will be given full weight consistently with our need to fight this case successfully.

First, you will wish to know that it is still our intention to continue to maintain, as our first line of defence in all these cases, that the international law requirement of the payment of prompt, adequate and effective compensation for expropriated property, which in general is attracted by Article 1 of the First Protocol of the Convention, does not operate against a State for the benefit of its own nationals. If we succeed on that, the argument about the proper basis of compensation should not arise at all. But we cannot be confident that this initial line of defence will hold and we must

/therefore

therefore be prepared to defend our position on compensation on its own merits.

Secondly, we shall try, in making out our defence on compensation, to avoid justifying the compensation actually paid in particular cases under the 1977 Act (as regards nationalisation) and under either the 1967 Act or the 1974 Act (as regards leasehold reform) as intrinsically "fair" but shall put the emphasis instead on justifying the compensation systems established by the Acts as being ones which a Government could, within its "margin of appreciation", legitimately adopt. This is a distinction which is perhaps of greater importance in relation to the nationalisation cases than in relation to the leasehold reform case but it is not without its value in the latter context also.

I must, however, point out that we may in the end be driven - either by the way in which Mr. Lester puts his case or because we are directly confronted with the problem by members of the Commission - into grappling with the question whether or not it is our contention that the compensation actually received by the applicants met the relevant international law standard, ie was "prompt, adequate and effective". If that happens and if we are not seriously to undermine our chances of success, I see no alternative to our answering the question in this way. We shall say that if, as we have contended, the system in question was itself one which was legitimately selected, the Commission should not concern itself with the results which the system produced in particular cases unless these results were manifestly wrong; and we shall deny (though it will certainly be part of the applicants' submissions) that the results in the instant cases were manifestly wrong. It is in that sense, so we shall argue, that we do assert that the compensation actually paid satisfied the international law requirements of "prompt, adequate and effective". This will be a difficult argument to put across but Mr. Nicholls is well aware of the importance

/to

to us of maintaining the distinction between that assertion on the one hand, and, on the other hand, the assertion that the compensation was fair or adequate in the sense that our colleagues intended when they criticised the measures in question during the passage of the legislation and subsequently. It would be quite wrong for me to try to tie Mr. Nicholls down in advance to any particular formulation - he must be absolutely free to play our hand as his judgment dictates according to the exigencies of the hearing - but I am fully confident that, if the need arises, he will pick his words very carefully so as to respect this important distinction and to spare us any avoidable political embarrassment.

This said, I think that we must expect the applicants to make some play, both through their Counsel during the proceedings and in other ways after the proceedings (despite the rule of confidentiality), with what they will represent as the discrepancy between our present legal case and our former political utterances. So far as the proceedings are concerned, I can assure you that Mr. Nicholls intends to adhere strictly to the line that what he says should in no way be construed as approval (or for that matter disapproval) by the present administration of the legislation in question or what was done under it: his concern and, he will contend, the concern of the Commission is merely the purely legal question of whether the legislation and what was done under it did or did not involve the United Kingdom in a violation of its legal obligations under the Convention.

Finally, I can confirm again that in justifying the measures in question as being "in the public interest" (which is another requirement of Article 1 of the Protocol), we shall be relying on two points, both of which should be helpful to us in the political context. The first is that what is "in the public interest" within the meaning of Article 1 is a matter on which Governments are entitled to a "margin

/of

of appreciation", so that our assertion that the measures in question did not exceed that margin of appreciation does not entail any expression of approval by us of what our Labour predecessors did. The second is that the phrase "in the public interest" is (like "adequate") a term which has a specialised meaning in international law, and in particular in the Protocol, so that our contention that the measures in question are not impugnable on that score in no way means that we endorse them as being desirable or in the national interest in ordinary parlance.

I am sure that we shall all watch the progress of these cases with keen interest and anxiety. Difficult as they are on both technical and political grounds, I believe that it is very important that we should fight them as hard as we can both because of the huge sums of public money that are directly involved in them and even more because of the potential consequences over a much wider field if we lost them.

I am copying this letter to the Prime Minister, the Secretary of State for the Environment and the Minister for Housing and Construction, the Secretaries of State for Wales and Scotland, the Chancellor of the Exchequer, the Secretary of State for Foreign and Commonwealth Affairs and Sir Robert Armstrong.

Yours ever. Michael.

The Rt Hon Patrick Jenkin MP
Secretary of State for Industry
Department of Industry
Ashdown House
123 Victoria Street
London, SW1

LORD PRIVY SEAL

Euro Pol. MAP

Foreign and Commonwealth Office
London SW1

25 November 1980

Dear Mark,

EUROPEAN CONVENTION ON HUMAN RIGHTS

Thank you for your letter of 18 November to Peter Carrington about the United Kingdom's reservation to Article 2 of Protocol No 1 of the European Convention on Human Rights.

There is no need for the United Kingdom to reaffirm this reservation when renewing acceptance of the right of individual application under the Convention because once a reservation has been made it remains effective until such time as it might be withdrawn. For this reason on the past occasions when the United Kingdom has renewed the right of individual application it has not been found necessary to refer to that reservation.

The United Kingdom are currently relying on this reservation in their arguments before the European Convention of Human Rights in the case of Campbell and Cosans. This concerns a complaint by two parents against the threatened use of the strap, or 'tawse', in Scottish schools.

I am copying this letter to the recipients of yours.

Yours ever
Ian

The Rt Hon Mark Carlisle QC MP
Secretary of State for Education and Science
Elizabeth House
York Road
London SE1 7PH

From: THE PRIVATE SECRETARY

1

PRIME MINISTER

By chance, you can announce the Govt's decision in answer to an oral Question (likely to be reached - Q4) from Philip Whitehead next Tuesday. Give the Home Secretary's agreement, content that we should plan for you to do so?

HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

21 November 1980

Yes MS

Yes no.

Dear Nick,

21/11

EUROPEAN CONVENTION ON HUMAN RIGHTS

As you know, Cabinet decided on 13 November that the Home Secretary should announce the Government's decision to renew the United Kingdom's acceptance of Articles 25 and 46 of the European Convention on Human Rights for five years from January 1981 by a reply to an inspired Question.

I was on the point of writing to George Walden with a draft Question and Answer when you told me that, subject to the Home Secretary's views, the Prime Minister might wish to announce the Government's decision in reply to a Question from Mr. Phillip Whitehead, M.P. which she is to answer on Tuesday, 25 November.

I am writing to confirm that the Home Secretary has no objection to the Prime Minister's announcing the Government's decision in her reply to Mr. Whitehead's Question. In consultation with the Foreign & Commonwealth Office and (bearing in mind Mr. Carlisle's letter of 18 November to the Foreign & Commonwealth Secretary) the Department of Education & Science, we shall send you a draft reply to Mr. Whitehead and notes for supplementaries.

I am sending copies of this letter to the Private Secretaries to the Foreign & Commonwealth Secretary, the Lord Privy Seal, the Secretary of State for Education & Science, the Chancellor of the Duchy of Lancaster (to whom I am writing separately about the request from Mr. Fred Silvester, M.P. for a debate on this subject), the Chief Whip and Sir Robert Armstrong.

Yours ever,

John Halliday

J. F. HALLIDAY

N. J. Sanders, Esq.

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

21 November 1980

Dear Robin,

EUROPEAN CONVENTION ON HUMAN RIGHTS

You wrote to Stephen Boys Smith here on 12 November about the request from Mr. Fred Silvester, M.P. for a debate on renewal of the right of individual petition under the European Convention on Human Rights.

You will see from a letter which I am sending today to Nick Sanders at No. 10 that the Prime Minister is likely to announce the Government's decision to renew the United Kingdom's acceptance of Articles 24 and 46 of the Convention in reply to a Question from Mr. Phillip Whitehead, M.P. on Tuesday, 25 November.

Enclosed with this letter is a draft of a letter which, subject to any comments which the Foreign & Commonwealth Office may wish to make, might be sent to Mr. Silvester on the day of the announcement.

I am sending copies of this letter and the enclosure to the Private Secretaries to the Prime Minister, the Foreign & Commonwealth Secretary, the Lord Privy Seal, the Secretary of State for Education & Science, the Chief Whip and Sir Robert Armstrong.

Yours ever,

John Halliday

J. F. HALLIDAY

Robin Birch, Esq.

FILE NUMBER .....

DRAFT LETTER

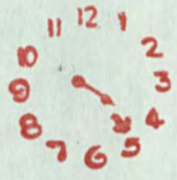
ADDRESSEE'S REFERENCE .....

TO	ENCLOSURES	COPIES TO BE SENT TO
Fred Silvester, Esq.,MP House of Commons LONDON SW1 OAA (FULL POSTAL ADDRESS)		Home Secretary Foreign & Commonwealth Secretary Chief Whip (FULL ADDRESSES, IF NECESSARY)

LETTER DRAFTED FOR SIGNATURE BY Chancellor of the Duchy of Lancaster
(NAME OF SIGNATORY)

In your letter of 30 October you asked for time to be found for the House to debate the United Kingdom's acceptance of the right of individual petition to the European Commission of Human Rights before that acceptance falls to be renewed on 14 January. The Government have been giving careful consideration to this issue and have come to the conclusion that it is right to renew our acceptance. The Prime Minister is announcing the Government's decision in reply to a Question by Phillip Whitehead today.

I appreciate that this is a matter to which you and many other Members attach importance, and you have of course raised it in the House on a number of occasions. The Government shares your view of the subject's importance. The decision the Government has now taken raises no fundamental new issue, however, and - as you point out - similar decisions have not been debated previously. Bearing in mind the other equally important demands on Parliamentary time, I am afraid that I cannot hold out any prospect of being able to provide any for a debate on this decision.



Euro Pol

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

The Rt Hon Lord Carrington KCMG MC
Secretary of State
Foreign and Commonwealth Office
Downing Street
LONDON SW1A 2AL

14 November 1980

R Patterson MP

Dear Peter,

EUROPEAN CONVENTION ON HUMAN RIGHTS

At last Thursday's Cabinet it was agreed that we should renew our acceptance of the optional clauses of the European Convention on Human Rights and I am sure that was right. However, in 1952 at the time of ratification of the Convention, HM Government entered a reservation to the effect that the principle affirmed in Article 2 concerning respect for the philosophical convictions of parents on educational matters is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure. Had I been present last Thursday I would have said that in renewing our acceptance we should reaffirm that reservation. If later on we have to rely on it - and this is quite possible in the course of the next few years - it will not look as if we had had to fall back on some ancient declaration which had to be specifically disinterred for the purpose. I hope it is not too late to consider a rider of this kind.

I am copying this letter to the Prime Minister, other members of the Cabinet and Sir Robert Armstrong.

Yours ever

Mark

MARK CARLISLE

Ref. A03532

PRIME MINISTER

European Convention on Human Rights

(C(80) 66)

BACKGROUND

The optional clauses of the European Convention on Human Rights provide for the right of individual petition to the European Commission of Human Rights and the acceptance of the compulsory jurisdiction of the European Court of Human Rights. All EC members except France, and 14 of the 20 States Parties to the Convention, accept the right of individual petition; 17, including all EC members, accept the compulsory jurisdiction of the Court. The United Kingdom initially accepted these clauses in 1966 for three years and subsequently for periods of two, three and five years. The present acceptance expires on 14th January 1981, and the Home Secretary and the Foreign and Commonwealth Secretary propose a further five-year renewal.

2. The Secretaries of State say that the dynamic and evolutionary interpretation placed on the Convention by the Commission and the Court has caused increasing concern. It has interfered further with the exercise of Parliamentary sovereignty than could have been foreseen and has limited the freedom of action of both the legislature and the judiciary. Particular areas of difficulty or embarrassment arising from earlier cases and cases under consideration or in prospect are listed in the Annex to C(80) 66. They include the interception of communications, immigration and (potentially) nationality, police procedures, penal law and treatment, corporal punishment in State schools, and (potentially) military discipline.

3. The Secretaries of State say that the decision not to renew could only be defended on the general grounds of protecting Parliamentary sovereignty. The United Kingdom would be attacked for avoiding its obligations under the Convention. Failure to renew would be difficult to reconcile with the Manifesto commitment to discuss a possible Bill of Rights, and would be represented in

Northern Ireland as an implicit admission that arrangements there breached the Convention. There would be adverse comparisons with the Republic's indefinite acceptance of the right of individual petition. Internationally, we should lose our tactical advantage in our relations with the Communist bloc and other countries infringing human rights. A decision not to renew, particularly during the review of the Helsinki Final Act, would be criticised by our allies. It would make it harder to defend non-ratification of corresponding provisions in the United Nations Covenant on Civil and Political Rights.

4. The Secretaries of State note that renewal could be for less than five years, but that this would merely raise doubts about United Kingdom support for human rights, and would probably make it necessary to look at the question again during the runup to the next General Election. The third possibility, of indefinite renewal, would provide conclusive evidence of support for the protection of human rights and would be seen by some as a safeguard for the future. But it is uncertain whether we could withdraw from the commitment, if there were to be unacceptable adverse judgments at Strasbourg, even if the declaration itself referred to that possibility. It would in any case be politically difficult to withdraw from an indefinite commitment. Tactically, it might be salutary for the Strasbourg organs not to be able to count on United Kingdom acceptance into the indefinite future.

5. The Secretaries of State propose that the decision should be announced in answer to an arranged Parliamentary Question.

HANDLING

6. You will wish to ask the Home Secretary and the Foreign and Commonwealth Secretary to introduce their memorandum. You will then want the comments of the Lord Chancellor and the Attorney General on the legal aspects, the Lord Chancellor on the implications for a possible United Kingdom Bill of Rights, the Secretary of State for Northern Ireland on the implications for the Province, and the Secretary of State for Defence on the position in respect of military discipline. You may want the views of the business managers and the Paymaster General on the feeling in Parliament and the country.

7. The Cabinet might first review the political arguments, domestic and international, against withdrawal from the optional clauses. These seem to be compelling. They might then go on to consider the period of renewal. The

unpredictability of the Strasbourg organs and the considerations in paragraph 4 above are strong arguments against indefinite renewal. The proposal by the Secretaries of State for five-year renewal, which would take the next decision on renewal beyond the next Election, has force.

8. Cabinet might endorse the proposal of the Secretaries of State that the decision should be announced in answer to an arranged Question. This would fall to the Home Secretary. You may want the views of the business managers on the relative advantages of an Oral as opposed to a Written Answer.

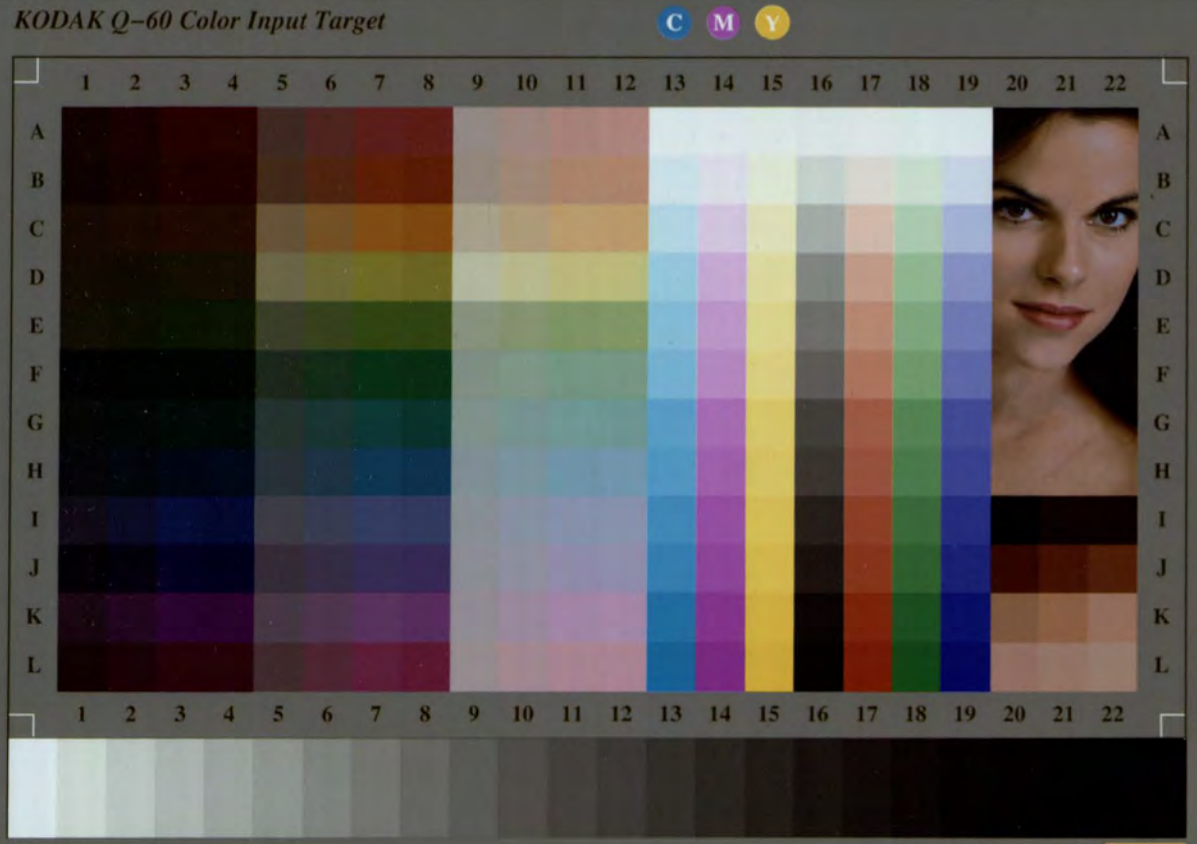
CONCLUSIONS

9. Subject to points made in discussion, Cabinet might endorse the proposal that the United Kingdom's acceptance of the optional clauses should be renewed for a further five-year period from January 1981, and that the decision should be announced in reply to an arranged Parliamentary Question.

RCA

ROBERT ARMSTRONG

12th November, 1980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