PREM 19/1525

Review of rights of entry

Pt 2

HOME AFFAIRS

Pt 1:- October 1979

Pt 2:- March 1982

PREM 19/1525

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~6.9.82~~		31.10.85					
~~21.6.82~~		~~8.11.85~~					
~~24.6.82~~		11.11.85					
~~30.6.82~~		~~20.11.85~~					
~~26.9.82~~		~~27.11.85~~					
~~30.9.82~~		~~28.11.85~~					
~~6.10.82~~		~~2.12.85~~					
~~16.11.82~~		16.12.85					
~~30.11.82~~		PT 2 ENDS					
~~6.12.82~~							
~~8.12.82~~							
~~30.11.82~~							
~~18.3.83~~							
~~18.4.83~~							
~~27.9.83~~							
~~5.10.83~~							
~~20.10.83~~							
~~26.10.83~~							
~~23.2.84~~							
~~1.3.84~~							
5.3.84							
~~6.11.84~~							
16.11.84							
~~26.9.85~~							
~~18.10.85~~							

PART 2 ends:-

MGA to LAW OFFICERS DEPT 16/12/86

PART 3 begins:-

CST to SOL. GEN 14/3/86

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
H(82) 30	21.06.82
H(82) 31	21.06.82
H(82) 32	21.06.82
H(82) 11th Conclusions, Minute 1	29.06.82
H(83) 33	26.09.83
H(83) 34	27.09.83
H(84) 8	22.02.84

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 R Wayland Date 6 February 2014

PREM Records Team

APPTS

16 December 1985

CROWN PROSECUTION SERVICE

The Prime Minister has seen the Solicitor General's Minute of 12 December, which she has noted without comment.

(MARK ADDISON)

Henry Steel Esq CMG OBE
Law Officers' Department

010

Prime Minister (2)

Mark 12/12

cc BG

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-936-6269

12 December 1985

PRIME MINISTER

CROWN PROSECUTION SERVICE

An Opposition Prayer to annul the Attorney General's Regulations transferring local government prosecuting staff to the new Service, and providing for the terms of their employment, was last night defeated.

Accordingly the Regulations (subject to there being no successful Prayer in the Lords) will take effect on 21 December. The Service will on 1 April 1986 assume its responsibilities in the Metropolitan Counties outside London (and in the Counties of Northumberland and Durham), and on 1 October 1986 in London and the rest of England and Wales.

The Director of Public Prosecutions and designated Chief Crown Prosecutors report increasing signs that the improved terms for pay and career prospects I announced on 12 November have greatly improved morale, and allayed anxieties, among their present staffs. I think we have done what was needed.

The first Civil Service Commissioners' competition for posts to be conducted since 12 November has produced applicants of high quality and in encouraging numbers.

There are therefore good grounds for hoping that when the Director of Public Prosecutions sends out at the end of December his 'notices of intended transfer', which are in

/effect

SOLICITOR GENERAL

effect his offers of employment to the people he wants in post on 1 April, the take-up will be satisfactory and the Service will from its outset fulfil our requirements of it.

Patrick Mayhew


PM85

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

2 December 1985

TAX AMNESTY

The Prime Minister was grateful for the Chancellor's minute of 21 November. She accepts that it would be better to hold over the possibility of a tax amnesty until the relevant Keith powers are in place.

(David Norgrove)

Philip Wynn Owen, Esq.,
HM Treasury.

CONFIDENTIAL

JB

DM/A61

CC BG

Caxton House Tothill Street London SW1H 9NF
6460
Telephone Direct Line 01-213 .....
Switchboard 01-213 3000

NBPM.

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
Treasury Chambers
LONDON
SW1

28 November 1985

Dear Nigel,

IMPLEMENTATION OF THE KEITH REPORT

Thank you for copying to me your minute of 8 November to the Prime Minister.

I welcome your decision to delay the implementation of the Keith Report on Inland Revenue Taxes and to consult more widely. I share your belief that we need to ensure that we consult small businessmen and taxpayers. I also believe that we will need to seek some more direct ways to consult them than simply issuing a consultative paper.

I am pleased that the balance of your consultations so far have pointed to a rather more flexible system than Keith recommended and a system with stronger safeguards for the taxpayer. I know that you are aiming to produce a balanced package but I am a little concerned that most of the proposals in your annex produce extra revenue and that none, so far as I can see, will lead to revenue losses.

I also share Norman Tebbit's concern over the burden of form filling and record keeping and particulary over the impact of a system of penalities. Presumably the longer period of consultation will allow the normal cost compliance assessment to be applied to these proposals, following the White Paper on "Lifting the Burden". I would certainly hope that we could consult business closely and consider the compliance costs of these proposals.

I know that you are well aware of the concern over some aspects of the implementation of the Keith recommendations on Customs and Excise. I would hope that the approach you are suggesting will prevent such difficulties occurring over the Inland Revenue. Indeed, it might be consistent with the substance and tenor of this approach, for us to reconsider some of the Customs and Excise changes, particularly over penalties and record-keeping. I would hope that this might be possible bearing in mind the further White Paper on deregulation next Spring.

I am copying this letter to the Prime Minister and Norman Tebbit.

Yours,

HOME AFFAIRS
RIGHTS OF EARLY
P52

2 (week-end)

Prime Minister

Agree that the idea of an amnesty should not be pursued further until the Keith powers are in place?

DLS 26/11

26 November 1985

MR NORGROVE

TAX AMNESTY

An amnesty is a major initiative that should rarely be used. If it is to lure people out of the black economy, or dissuade them from entering, then it needs to be coupled with wide-ranging proposals for tax reform - and perhaps jobs - to ensure this happens.

We agree with the Chancellor: it is best to wait until Keith is in place to ensure we maximise the value of such an initiative.

Peter Warry

PETER WARRY

RT8.89 CONFIDENTIAL

CF
Will PW be commenting?
B/F 26/11. DCR 22/11

CCBG

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

TAX AMNESTY

You asked me to consider the possibility of a tax amnesty.

I attach a note prepared by officials. For understandable reasons, they take a cautious approach.

Nevertheless, I do not think we ought necessarily to reject the idea for all time.

First, it is clear that a good deal of enterprise and entrepreneurial activity is at present taking place outside the tax system. We need to harness and legitimise this activity, and one way to do so would be to encourage and assist these people to put themselves on a proper basis.

Second, however commendable the enterprise, we cannot, of course, condone blatant tax evasion. Our commitments to law and order, and to equal treatment within a fair society, require that firm measures are taken against those who, having had the opportunity to put their affairs in order, continue to exploit the rest of the community. It is all too easy to see tax evasion as cheating on the Government or the Revenue, rather than for what it is - cheating on the majority of ordinary people who pay the proper tax without fuss or complaint.

CONFIDENTIAL

Unfortunately, we are not at present in a position to mount the right sort of effective enforcement action. For that we need both the Keith legislation and increased resources. This suggests that it might be better to hold over the possibility of an amnesty until we have the relevant Keith powers by which time the Revenue should be emerging from their current work-state difficulties.

N.L.
21 November 1985

TAX AMNESTY

1. The idea of a general amnesty has been looked at from time to time in the past, but there has always been a consensus against it.

2. The Keith Committee, which examined the suggestion, identified three conditions for success (the relevant extract is annexed) -

i. a specific period, during which the evader could come forward and make a full confession;

ii. an inducement - immunity from prosecution and penalties (and perhaps interest) - in return for paying the tax;

iii. the period of immunity to be followed by a more rigorous regime of enforcement, with a fair certainty that those no coming forward would eventually be caught and dealt with severely.

3. The third condition is not one which the Revenue are at present in a position to deliver. First, the Keith proposals, including an increase in the penalties for failing to declare income or gains, will not be implemented until late 1987 at the earliest. Second, far from there being staff resources available to direct an increased effort in this direction, the Revenue's current work-state difficulties are forcing the Department to accept a reduction in enforcement activity in several important areas.

4. An alternative possibility would be to mount a less ambitious amnesty, without the threat of an enforcement blitz at the end of the immunity period. This would not be directed at those who are susceptible only to threats of detection and severe punishment. Instead, the objective would be to offer a way out to those who, having perhaps established a viable black economy business, now wish to establish themselves on a legitimate basis but are discouraged from doing so, either because they fear prosecution or because they are unable to afford the cost in tax, penalties and interest of owning up to their past misdeeds.

An amnesty with this limited objective raises two main questions -

- are there in fact a significant number of people in this position, ready to come forward and legitimise themselves?

- what would be the reaction of other sections of the community not benefiting from the amnesty? First, there would be some, at present outside the black economy, who would as a result be tempted to join it, encouraged by the thought that in due course there could be a further amnesty, on equally easy terms, and without in the meantime any increased danger of being caught. If this group were large enough, the net effect of the amnesty could be to add to, rather than reduce, the size of the problem. Second, and more importantly, the majority of ordinary honest citizens (as well as those who have previously been caught and paid the penalty) might well resent the special lenient treatment, particularly if there were any suggestion that the forgiveness might cover the past tax, in addition to the penalties and interest.

It was on the grounds of unfairness that the National Federation of the Self Employed in 1979 took the Revenue to the House of Lords over what they - mistakenly - perceived as an amnesty for the Fleet Street casuals. And it was on both grounds that the Keith Committee came down strongly against any amnesty at all.

There is already considerable easing of the consequences for someone who comes forward voluntarily to disclose undeclared income and then co-operates fully in the subsequent enquiries. In practice this weighs heavily in favour of the Revenue agreeing to a monetary settlement rather than prosecuting. And in many cases it would be taken into account in setting a lower level of penalty - even if the tax and interest had to be paid in full. When the leaflet setting out the Revenue's policy on mitigating penalties is published next year - as recommended by Keith - the extra publicity given to their practice may itself prompt some people to come forward.

To sum up,

- a limited amnesty, lacking credible subsequent enforcement, could be counter-productive

- but a fully-effective amnesty on the basis envisaged by Keith is not feasible in present circumstances.

(a) *Granting an amnesty coupled with a publicity campaign*

27.2.2. Witnesses pointed to the experience of other revenue authorities and also to examples of amnesties in certain limited areas that had already been tried in the United Kingdom. The common features, each an essential element, were

(i) the establishment of a limited time during which the tax evader might come forward and make a full confession;

(ii) that the taxpayer would face no interest charge nor any other consequence in the form of civil proceedings for a penalty or criminal proceedings, while he would be charged to tax on any underdeclaration subject to de minimis limits; and

(iii) that the amnesty period would be followed by a new more rigorous regime of enforcement carrying a significantly greater risk of detection and punishment, in order to make the inducement credible.

In the case of the Irish example of 1976 drawn to our attention, the third element involved a change of policy away from authorising the settlement of serious evasion out of court. United Kingdom experience has been in more limited areas. For example in 1967 there was a three month moratorium on prosecutions for false claims to personal allowances. In 1977 no interest and penalties were charged in respect of late 1975/76 and 1976/77 tax returns submitted within three months of the announcement. The Inland Revenue summed up their reactions to the suggestion of further amnesties as follows: "we have not gone in for any large scale amnesties and the experience of those who have is not encouraging". It seemed to us that if any one of the three elements in the amnesty equation were missing the whole exercise could well be counterproductive. In particular if the revenue authorities were not in a position to deliver a significantly improved detection rate at the third stage, then all that would have been achieved would be a reinforcement of the belief of tax evaders that all they need to do is sit tight. An amnesty is open to the further objection that it does not meet the representation that the Departments' enforcement efforts ought to be perceived to be even-handed across all groups of taxpayers. Of its very nature it contains an element of unfairness not only towards the honest citizen who has always met his tax obligations fully and on time, but also to those citizens who, having been dishonest, have recently been discovered and suffered the normal penalty. *We recommend* against the introduction of amnesties.

(a) *Granting an amnesty coupled with a publicity campaign*

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CONFIDENTIAL FILE DA

CBG

10 DOWNING STREET

From the Private Secretary

20 November 1985

IMPLEMENTATION OF THE KEITH REPORT

The Prime Minister and Chancellor today briefly discussed the Chancellor's minute of 8 November about the timetable for implementation of the Keith Report. The Prime Minister agreed that the Chancellor should extend the period for consultation, aiming at legislation in 1987.

I am copying this letter to Andrew Lansley (Chancellor of the Duchy of Lancaster's Office) and Leigh Lewis (Department of Employment).

(David Norgrove)

Tony Kuczys, Esq.,
HM Treasury.

CONFIDENTIAL

Prime Minister

If you are attracted by the idea of a Taxpayers' Charter I suggest you discuss it at your next bilateral with the Chancellor. Yes mb
We could discuss Keith generally at the same time. DNS 15/11
Content?

PRIME MINISTER 15 November 1985

IMPLEMENTATION OF KEITH REPORT

This year's Finance Act implemented the Keith proposals on VAT, proposals for the Inland Revenue were promised for the 1986 Budget. The Chancellor now wishes to delay them until the 1987 Budget to give more time for consultation and to ensure that the detailed provisions are absolutely correct. He would like to announce this shortly.

There is no doubt that updating the Revenue system is long overdue and that the Keith proposals - covering the administration, investigation, enforcement and appeal procedures - ought to be an improvement both for the Revenue and the taxpayer if implemented in a balanced manner.

The Chancellor has condensed Keith's 99 recommendations into some 30 proposals. These appear sensible but until they are worked up in detail it is difficult to comment. Nevertheless, those who suffer (whether innocently or because an abuse has been blocked) will complain, whilst those who gain are unlikely to be heard.

There is of course already a groundswell of complaint against the Revenue for harassment and abuse of powers which taxpayer can only pursue through their MPs. (The Commissioners' only hear cases on strict tax law whilst most of the contentious decisions relate to the very wide powers of Revenue discretion). MPs send the financial Secretary some 10,000 complaints each year - although some of these will relate to tax law rather than Revenue practice.

If Keith is to be implemented it needs to be coupled with some non-technical proposals that will be seen to redress the balance between taxpayer and tax collector, and allow easy appeal against harassment and maladministration. One

way to do this is a 'Taxpayers' Charter' supervised perhaps by the local General Tax Commissioners (who would have a reduced role under Keith anyhow).

Attachment 1 is our first draft at such a Charter. This has been seen by Treasury Ministers and the Revenue who, although initially reluctant, are now persuaded it should at least be on the agenda. The Revenue claim that the first three sections (harassment, zeal and discretion) virtually restate their existing policies, but it is abuses in just these areas that give rise to a good number of the complaints. They are not opposed in principle to section 4 (administration) although there are real practical difficulties at present, whilst they would not support section 5 (policy towards small business). For comparison attachment 2 is the existing Canadian Charter which encompasses only the harrassment and zeal sections of our proposal.

Any Charter would need to be carefully worded so as not to antagonise Revenue staff (who are already suffering loss of morale and huge backlogs of work), yet still be of propaganda benefit to Government and real assistance to the taxpayer.

We recommend

- agree delaying Keith until the 1987 budget

- the Chancellor be asked to prepare proposals for a 'Taxpayers' Charter' to be introduced in conjunction with Keith.

Peter Warry

PETER WARRY

TAXPAYERS' CHARTER

1. Harassment

   a. The taxpayer will be treated as innocent unless there is real evidence to the contrary.

   b. The Revenue will never deliberately place obstacles in the path of the taxpayer if these can be avoided.

   c. The Revenue will adopt a policy of active courtesy (not merely avoid being rude).

2. Zeal

   a. The Revenue will endeavour never to be over-zealous.

   b. The Revenue will not pursue taxation of small sums (eg minor perks), where the burden of assessing and collecting the proceeds (to all concerned) is disproportionate. (Cases of fraud will continue to be pursued independent of the sum involved).

   c. The Revenue will never knowingly demand too much tax or tax that is not payable at all. The only exception will be the use of large estimated assessments to force taxpayers to submit overdue accounts.

3. Application of Discretion

   a. The Revenue's discretion will always be impartially applied with equal treatment for like cases right across the country, discretion will never be used as a weapon to penalise some taxpayers and reward others.

   b. The taxpayer will be given the benefit of the doubt when there is uncertainty either as to fact or law. The Revenue would however continue to take test cases before the courts in order to clarify the law.

JNJAAB

c. When the Revenue decides to change policy (eg as appeared to happen on the taxation of creche benefits) they will give adequate public notice and not apply the policy change retrospectively.

4. Administration

a. No letter or query will lie for more than three months without receiving a proper answer.

b. The Revenue will adopt a 'do as you would be done by' policy eg the taxpayer will be expected to respond to correspondence in the same time that it takes the Revenue, interest on tax overpaid will be in all respects equal to interest on tax underpaid.

c. So far as the law allows the Revenue will show no administrative preference towards dealing with a husband rather than a wife.

5. Policy towards Business

a. The Revenue will treat small business in the same way as it treats big business - it will not expect small business to comply with procedures which it has waived for large businesses.

b. The Revenue will expect a business's administrative systems and procedures to be commensurate with its needs and resources (ie the Revenue will not expect a small trader to maintain the same accounting systems or expense approval controls as those of a major multinational).

c. The Revenue will adopt a liberal interpretation of the definition of self-employment.

Revenue Canada Taxation | Revenu Canada Impôt

DECLARATION OF TAXPAYER RIGHTS

THE CONSTITUTION AND LAWS OF CANADA ENTITLE YOU TO MANY RIGHTS THAT PROTECT YOU IN MATTERS OF INCOME TAX. YOU ARE ENTITLED TO KNOW YOUR RIGHTS. YOU ARE ENTITLED TO INSIST ON THEM. YOU ARE ENTITLED TO BE HEARD, AND TO BE DEALT WITH FAIRLY.

HELPING YOU EXERCISE YOUR RIGHTS REMAINS AN IMPORTANT ROLE OF THE STAFF OF NATIONAL REVENUE TAXATION AT ITS DISTRICT OFFICES AND OTHER LOCATIONS. FAIR TREATMENT OF A COMPLAINT IS ONE OF YOUR GREATEST RIGHTS.

Canada

FAIR TREATMENT IN ALL DEALINGS WITH NATIONAL REVENUE TAXATION MEANS IMPORTANT RIGHTS TO:

Information
You are entitled to expect that the Government will make every reasonable effort to provide you with access to full, accurate and timely information about the Income Tax Act, and your rights under it.

Impartiality
You are entitled to an impartial determination of law and facts by departmental staff who seek to collect only the correct amount of tax, no more and no less.

Courtesy and Consideration
You are entitled to courtesy and considerate treatment from National Revenue Taxation at all times, including when it requests information or arranges interviews and audits.

Presumption of Honesty
You are entitled to be presumed honest unless there is evidence to the contrary.

FAIR TREATMENT UNDER THE CONSTITUTION AND LAWS OF CANADA INCLUDES IMPORTANT RIGHTS TO:

Privacy and Confidentiality
In addition to other constitutional and legal rights, you have a special right that personal and financial information you provide to National Revenue Taxation will be used only for purposes allowed by law.

Independent Review
You are entitled to object to an assessment or reassessment if you think the law has been applied incorrectly. To protect this right, you must file your objection within 90 days of the assessment or reassessment. Filing an objection will start an independent review by departmental appeals officers. If they don't resolve the matter to your satisfaction, they will explain how you can appeal to the courts.

An Impartial Hearing Before Payment
Until you have had an impartial review by the Department or a court, you may withhold amounts disputed in formal objections filed after January 1, 1985. If you appeal to a higher court, you will be able to provide equivalent security instead of paying those disputed amounts.

Certain exceptions, set out in legislation to guarantee these rights, are applicable to frivolous appeals to the courts, or where collection is clearly in jeopardy.

YOU ARE ENTITLED TO EVERY BENEFIT ALLOWED BY THE LAW

You have a right to arrange your affairs in order to pay the minimum tax required by law. You can also expect your government to administer tax law consistently, and to apply it firmly to those who try to avoid paying their lawful share.

CONFIDENTIAL

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Chancellor of the Duchy of Lancaster

Tel No: 233 3299
7471

14 November 1985

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

B/f with PV comments.
15/11 Chased by Copyright

NBPM.

D Nigel

IMPLEMENTATION OF THE KEITH REPORT

Thank you for copying to me your minute of 8 November to the Prime Minister.

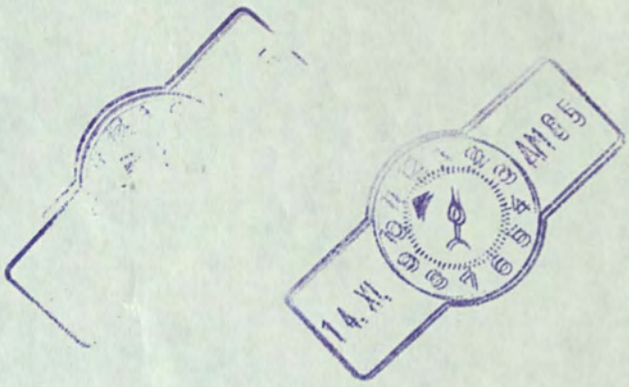
I share your view that we should allow for a period of open consultation and not seek to legislate before the 1987 Finance Act. The proposals summarised in the annex to your minute seem to strike the right balance between the rights and obligations of taxpayers. Nevertheless, we have to be sure that individual taxpayers and small businesses can be reassured as to the content of the proposals, particularly as respects the burden of form-filling and record-keeping, and to ensure that they do not believe that a penalty regime is in prospect which will bear too harshly on those who are dilatory, but who do not have an intent to evade payment.

I am copying this letter to the Prime Minister and to David Young.

Yours Norman

NORMAN TEBBIT

Home Affairs: Rights of Entry Pt 2.



OF

Had you better keep this now?

JD 12/11

we have earlier PR's

10 DOWNING STREET

From the Private Secretary

11 November 1985

CROWN PROSECUTION SERVICE

The Prime Minister has seen the Solicitor General's minute of 4 November. She is content that he should proceed as he proposes in paragraph 8.

I am copying this letter to Richard Broadbent (Chief Secretary's Office).

MARK ADDISON

Henry Steel, Esq., CMG, OBE
Law Officers Department

008/1283

MANAGEMENT IN CONFIDENCE

FROM: CHIEF SECRETARY
DATE: 8 November 1985

PRIME MINISTER

CROWN PROSECUTION SERVICE

As Patrick Mayhew says, the terms for the establishment of the Crown Prosecution Service set out in his minute to you of 4 November are agreed with the Treasury. I am glad that he is not pressing the union argument for "pay protection for life". It would mean guaranteeing not just a given rate of pay but local authority scales (where they exceed our own rate for the job) plus local authority increases. In the circumstances our 10 year protection, followed by mark-time, is generous, and a concession would have very serious repercussions making all sorts of desirable reorganisations and restructurings that much more expensive.

2 I hope that the other improvements we have been able to make will now enable Patrick to get this service off to a good start.

3 I am copying this minute to the Solicitor General.

JM

JOHN MacGREGOR

MANAGEMENT IN CONFIDENCE


08.V.
PM 8 5

LT4.4

CONFIDENTIAL

DN

Await PU comments

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

Prime Minister
I'm sorted start on page 3.
DLR 15/9

PRIME MINISTER

IMPLEMENTATION OF THE KEITH REPORT

I have been thinking hard about the next steps in respect of the report of the Keith Committee.

We have long recognised the need to modernise and streamline the way in which taxes are administered. This involves two main tasks. The first is to computerise the Inland Revenue's network of local tax and collection offices. That we already have well in hand. The second is to overhaul what Keith described as the antediluvian system of Revenue powers, individuals' rights and taxpayer obligations which regulate the day to day working relationship between the Revenue, taxpayers and tax advisers.

The Keith Committee was set up by Geoffrey Howe in 1980 to review the enforcement powers of the Revenue Departments. The first two volumes of the Report were published in March 1983 and covered income tax, corporation tax, capital gains tax and VAT. We implemented the VAT recommendations, with some modifications, in this year's Finance Act.

On the Inland Revenue taxes, the Committee pointed towards a rather more wide-ranging modernisation of the system, including some substantial adjustments in working procedures. I have been concerned, so far as possible, to carry forward these reforms on the basis of a general consensus. We have deliberately allowed ourselves a lengthy period of consultation with the various representative bodies. Last year I announced that, in the light of the discussions, I hoped that during 1985 it would be possible to bring forward draft clauses representing the Government's conclusions, with a view to legislation in the 1986 Finance Bill.

The Keith Committee's recommendations for the Inland Revenue were accepted by the professionals and the representative bodies as providing a convincing case for reform and achieving a fair balance, in these sensitive matters, between the tax authorities and taxpayers in general. That is not perhaps surprising, since the Committee had the benefit, not only of Lord Keith's experience as a Lord of Appeal, but also the expertise of Brian Crack and John Avery Jones; both of them are widely respected within their professions.

- On the one hand, the Committee took the view that the Revenue should have sufficient powers to ensure that people meet their tax liabilities in full and at the right time. In particular, it was felt that the Inland Revenue should have access to a wider range of information, that time limits for submitting returns and accounts should be more reasonable but more strictly enforced, and that there should be some strengthening of the penalties and interest charges where tax is paid late or not at all.

- On the other hand, the Committee recommended measures to ensure that the rules for making returns and paying tax were fair and realistic; and that individual taxpayers were sufficiently protected against undue or unnecessary intrusion into personal privacy, and generally against any abuse of official power. For this purpose the Revenue's use of its powers was to be controlled within clear statutory rules, defining the rights as well as the obligations of taxpayers, incorporating clear rights of appeal, and subject always to judicial supervision by the independent Appeal Commissioners and the Courts.

- the Committee was at the same time concerned to streamline and modernise the system, so that, in the normal case, tax could be assessed and collected with more certainty and less administrative burden for both the taxpayer and the Revenue.

The consultations which have subsequently taken place have been constructive and helpful. A general feeling has emerged during these discussions that in certain respects the balance of the arguments point to a rather more flexible system than Keith recommended, together with some additional strengthening of the safeguards for taxpayers. A synopsis of the proposals, incorporating our modifications to reflect this feeling, is attached as an Annex.

However, in spite of the progress we have made, I am not satisfied that, even if we published draft clauses as soon as possible, there would be sufficient time between now and the 1986 Budget for the provisions - which will be lengthy and complicated - to be given the detailed analysis they require if we are to be sure of getting them right.

Furthermore, I am not sure that we have yet adequately consulted small businessmen and the main body of individual taxpayers who are members of no representative body or, if they are, may not be aware of these developments or of how they would be affected by them. There is no escaping the fact that a minority of people who now deliberately delay payment of tax, or seek to evade it outright, would under the Keith proposals when fully implemented have to pay more promptly than they do now. There would be a small net addition to the tax yield, and complaints accordingly. It is all the more important to satisfy the great majority of taxpayers that their interests would be safeguarded, and clarified. It will therefore be important to underline the message - emphasised by Keith and by many of these who gave evidence to him - that it is the law-abiding

majority, and in particular honest businessmen, who suffer when others steal an unfair advantage by escaping tax. And we shall need to reassure people that the conscientious taxpayer, who takes reasonable care, has nothing to worry about.

I have concluded that both these factors point to a rather longer period of consultation on the draft legislation than would be possible if we were to include it in the next Finance Bill. My proposal therefore is that we should now complete the preparation of the draft clauses and discuss them on a confidential basis with the representative bodies. Provided that this further period of consultation proved satisfactory, the clauses could be published as part of a consultative document during the summer, once the Finance Bill is out of the way. That would allow a further 6 months or so of open consultation during which we would hear the views of ordinary taxpayers, including in particular small businessmen, before proceeding to legislate in 1987.

Even with legislation in 1987, we could, if we wished, delay the coming into effect of the new provisions until the next Parliament. A period of notice would probably be welcome to businessmen and accountants, and would be consistent with the gradualist approach which will be necessary in relation to a number of the more important aspects of the package. Some of these could in any case come fully into force only around the end of the decade.

The English and Welsh Institute of Chartered Accountants has recently written to me about their concern at the delay in issuing a consultative document; and other bodies have expresed similar worries. We ought not to let this uncertainty continue longer than necessary. Provided, therefore, that you agree to the revised timetable, I propose to make an early announcement to the effect that the 1986 Finance Bill will not contain any action on the Inland Revenue aspects of Keith and that further consultations are to take place with a view to legislating in 1987.

CONFIDENTIAL

I am copying this minute to the Chancellor of the Duchy of Lancaster and the Secretary of State for Employment.

N.L.

N.L.
8 November 1985

I apologise for the muddle about the
minute + attachments. But it is a complicated
subject on which I know you are interested.

N.L.

THEME	BRIEF DESCRIPTION OF PROPOSALS	TAXPAYERS AFFECTED	STRUCTURAL OR DETAIL	HOW NEAR TO KEITH'S RECOMMENDATIONS	LIKELY RECEPTION	REVENUE EFFECT
VERIFYING TAX RETURNS AND ACCOUNTS	A simpler way for the Inland Revenue to ask for information about tax matters from anyone who has it. There will be a new right of appeal for those who are asked to provide information; the reimbursement of some costs of complying; statutory safeguards on use by the Inland Revenue; and - subject to a High Court override - protection for privileged documents.	Anyone having information about a person's tax affairs: individuals, companies, and public authorities (including government departments).	Limited but important reform.	Fulfils Keith.	Some misgivings likely about extending coverage particularly to government departments.	Unquantifiable increased yield from investigations in longer term.
				Enhanced safeguards for privilege override were approved by Lord Chancellor and Solicitor General.	Professional bodies and CBI do not welcome proposals on privilege override.	
	Individual taxpayers to tell the Revenue of each source of income.	Individual taxpayers.	Remedies a weakness.	Fulfils Keith.	Unlikely to be opposed.	Unquantifiable increase in revenue.
	Tax related penalty for failure to tell the Revenue about a source of income or gains (to replace present flat rate penalty).	Individuals and companies.	Limited change	Fulfils Keith.	Unlikely to be opposed.	Unquantifiable increase in penalties.
	Freer exchange of information between local Revenue and Customs and Excise offices; and a pilot scheme for joint inspection visits.	Businesses above VAT threshold.	Wider use of existing 1972 legislation.	Follows closely.	Likely to be opposed by small business organisations.	Small increase in yield from investigations.

THEME	BRIEF DESCRIPTION OF PROPOSALS	TAXPAYERS AFFECTED	STRUCTURAL OR DETAIL	HOW NEAR TO KEITH'S RECOMMENDATIONS	LIKELY RECEPTION	REVENUE EFFECT
VERIFYING TAX RETURNS AND ACCOUNTS (Contd)	Construction Industry - modification to special tax deduction scheme; and new right of appeal for taxpayer.	Businesses within the construction industry.	Detailed minor changes.	Proposal to reduce rate of tax deduction dropped (opposed by some in industry).	Fully discussed with the industry who broadly accept.	Unquantifiable improvement in yield.
	Creation of a summary offence to simplify and make more effective the investigation of criminal offences in smaller cases.	Individuals, particularly "moonlighters", "ghosts" and "earners and drawers".	Structural.	Narrower in scope than original recommendations. (Awaiting the outcome of the Law Commission's review of the law of fraud).	Uncontroversial.	Small.
	Business books and records to be maintained and kept for 6 years.	Businesses.	Structural.	Fulfils Keith.	Acceptable in principle, but some misgivings among traders about the sort of records to be kept and the length of retention period.	Unquantifiable increase in revenue.
	Revenue to be able to inspect business records.	Businesses.	Structural.	Modified to exclude power to enter business premises.	Unwelcome to small business organisations and to some accountants.	Unquantifiable increase in revenue.
FAIR AND CLEAR SYSTEM OF PENALTIES	Simplification, including: - reduction of maximum civil penalties for fraud and negligence - small omissions exonerated - streamlined procedures for imposing penalties - right of appeal	Any taxpayer who commits a tax offence (company, unincorporated business or individual).	Structural reform, but with many detailed changes.	Significantly modified in response to representations: an arbitrary arithmetical test for determining liability to penalty has been dropped.	Generally acceptable as modified.	Steamlined procedures could have full year effect up to +£5m in interest charges and an unquantifiable amount in penalties. (Very tentative, since highly sensitive to taxpayer behaviour.)

THEME	BRIEF DESCRIPTION OF PROPOSALS	TAXPAYERS AFFECTED	STRUCTURAL OR DETAIL	HOW NEAR TO KEITH'S RECOMMENDATIONS	LIKELY RECEPTION	REVENUE EFFECT
PROTECTING CITIZEN'S RIGHTS	- New statutory safeguards for the taxpayer in relation to the Revenue's power to search for evidence under warrant in serious tax offence cases.	Only those suspected of criminal fraud or holding evidence of criminal fraud.	Detail.	Small modification in further favour of taxpayer.	Expected and generally welcomed.	NIL
	Courts to be able to order production of information as less intrusive alternative to search warrant procedure.	Only those suspected of criminal fraud or holding evidence of criminal fraud.	Structural.	Fulfils Keith.	New power will reduce need for searches.	NIL
	- New grievance procedures for taxpayers in respect of both powers.	As above.	Detail.	Fulfils Keith.	Welcome.	NIL
	Improvements to General and Special Commissioners' appeal procedures.	Individuals and companies.	Detail.	Broadly as Keith (some points still under discussion with Lord Chancellor's Department).	Generally welcomed.	NIL
	Circumstances in which Revenue may make further assessment where no taxpayer default.	All classes of taxpayer.	Detail	Mainly fulfills Keith; but modified to put some limit on reopening claims to relief. A later Court decision has complicated this issue since Keith reported.	Some professional concern likely to be expressed.	Impact of Court decision potentially very damaging.
	Inland Revenue investigation practice to be publicised.	Mainly business taxpayers.	Detail.	Fulfils Keith.	Likely to be welcomed.	NIL

THEME	BRIEF DESCRIPTION OF PROPOSALS	TAXPAYERS AFFECTED	STRUCTURAL OR DETAIL	HOW NEAR TO KEITH'S RECOMMENDATIONS	LIKELY RECEPTION	REVENUE EFFECT
PROTECTING CITIZENS' RIGHTS (Contd)	Improving interview procedures and providing taxpayers with a record of interviews.	Only those suspected of criminal fraud.	Detail.	As recommended by Keith.	Likely to be welcomed.	NIL
MODERNISING ADMINISTRATION	New Scheme for companies ("Pay and File") to achieve payment on time and receipt of accounts and tax computations within a reasonable period. Fresh initiative to overcome cumbersome administrative procedures which presently involve formal assessments before tax can be collected. Opens up possibilities for furthur measures to streamline tax system. Involves commercial interest on under and over-payments ("Mirror image" interest); and strictly enforced penalties for delay in providing accounts and computations. Scheme could be fully operational from turn of decade.	Companies.	Very important structural reform.	Achieves Keith's objectives but detailed method substantially modified in response to representations. Scheme developed in consultation with professional bodies.	"Mirror image" interest widens appeal of new payment arrange-ments. Likely to be acceptable generally and warmly welcomed by accountancy profession.	Eventual staff savings (90-140); improved cash flow; and an unquantifiable penalty yield.
	Corresponding scheme for unincorporated traders' returns and accounts to follow in early 1990s.	Unincorporated traders.	Very important structural reform		Likely to be welcomed with some possible reservations.	Some tax and penalty yield.

THEME	BRIEF DESCRIPTION OF PROPOSALS	TAXPAYERS AFFECTED	STRUCTURAL OR DETAIL	HOW NEAR TO KEITH'S RECOMMENDATIONS	LIKELY RECEPTION	REVENUE EFFECT
MODERNISING ADMINISTRATION (Contd)	Realistic time limit for sending in personal returns with strictly enforced penalties for delay. More widespread returns issue with simplified form.	Employees and pensioners.	Structural.	Follows in principle but penalty scheme modified.	Acceptability depends on presentation. Will not take effect until early 1990's.	Some tax and penalty yield. Staff cost involved in increased returns issue.
	Improvement and clarification of procedures for collecting overdue tax.	Individuals and Companies	Detail, including codification.	Fulfils Keith.	Minor and uncontroversial.	Negligible.
	Existing access to records extended to cover those on computer files.	Businesses.	Moving with the times: mirrors 1985 Customs & Excise measure.	Fulfils Keith.	Neutral.	Possible small improvement in revenue.

THEME	BRIEF DESCRIPTION OF PROPOSALS	TAXPAYERS AFFECTED	STRUCTURAL OR DETAIL	HOW NEAR TO KEITH'S RECOMMENDATIONS	LIKELY RECEPTION	REVENUE EFFECT
ENCOURAGING PAYMENT ON TIME	Interest charge on late payments of PAYE where delay in sending returns is such that the Revenue have been forced to issue regulatory notices. Also clarification of what is "payment" for PAYE purposes.	Mainly certain directors not deducting PAYE properly from their own fees etc.	Structural	Fulfils Keith.	Possible complaints from some directors. Otherwise should be accepted as right and fair.	Improved Exchequer cash flow once-and for-all £80m brought forward in two years following implementation. Probable smaller bringing forward in later years.
	New system of penalties for late end of year returns (but not for immediate implementation).	Employers and Contractors.	Structural innovation.	Fulfils Keith.	May be contro-versial and will need careful presentation.	Advancing the receipt of PAYE tax by 4-6 weeks.
	Furthur consideration of proposals for interest charges on late paid PAYE generally, including failure to make monthly remittances on time.	Employers and Contractors.	Structural.	Fulfils Keith.	Non-commitment to this proposal will be welcomed.	Could potentially be very large revenue accelerator.
	New form of stream-lined penalty for delayed returns of dividends and other taxed payments.	Companies making such payments.	Structural.	Follows Keith with minor modification.	Generally acceptable.	Significantly improved cash flow.

HOME AFFAIRS. Rights of Entry Pt 2

RT8.61

CONFIDENTIAL

cc BG

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

N
11/11

8 November 1985

David Norgrove Esq
10 Downing Street
LONDON
SW1

Dear David

INLAND REVENUE ENFORCEMENT

already replied. See your letter 14 October.

You wrote to me on ~~26~~ September recording that the Chancellor had undertaken to consider the idea of a tax amnesty; and also chasing a reply to Andrew Turnbull's letter to Rachel Lomax of 11 July.

On the second point, you will have seen that the Chancellor has sent a minute to the Prime Minister today, setting out his proposals for implementing the Keith Report. We shall be letting you have a note on the idea of an amnesty shortly.

Yours ever

Tony

A W KUCZYS
Private Secretary

HOME AFFAIRS: RIGHTS OF ENTRY: Pt 2.

PROSECUTING Solicitors Society

12/11

10 DOWNING STREET

From the Private Secretary

5 November 1985

CROWN PROSECUTION SERVICE

You wrote to Tim Flesher on 10 October with the Chief Secretary's comments on a draft letter supplied by the Solicitor General for the Prime Minister to send the Prosecuting Solicitor's Society.

As you know, the Solicitor General was to discuss the terms to be offered staff in the Crown Prosecution Service with the appropriate trade unions. He has now done so, and I enclose for information a copy of a note setting out the current state of play.

I should be glad to know if you wish to comment on this before I submit it to the Prime Minister for information.

MARK ADDISON

Richard Broadbent, Esq.,
Chief Secretary's Office,
H.M. Treasury.

Prime Minister ①

You had a word with the Solicitor General about this earlier in the week. The Chief Secretary is content (his minute is attached). Agree that the Solicitor General should proceed on this basis (gen)?

Yes MEA 8/11

PRIME MINISTER

CROWN PROSECUTION SERVICE

1. My minute dated 4 October 1985 accompanied a draft reply for you to send to the President of the Prosecuting Solicitors' Society of England and Wales (PSSEW). He had expressed concern about the terms likely to be offered to staff in the Crown Prosecution Service. My minute explained the position at that date, and I refer you to it. This minute sets out the present position.

2. I have since met the Crown Prosecution Service Trade Union Group on two occasions. They represent unqualified as well as qualified staff at present employed in prosecuting solicitors' departments. I have met the Chairman of the PSSEW on a further occasion. The DPP has had further discussions with them. I have additionally been advised by Mr David Gandy, at present Chief Prosecuting Solicitor of Manchester and Field Manager designate of the new Service.

3. In consequence I believe I have a sufficiently reliable assessment of the terms we need to offer to attract and retain staff of the required quality (our declared object).

4. The matters on which anxieties centred divide into two categories, which I call respectively principal and ancillary. Comments by staff representatives are in quotes.

i. Principal matters:

(a) The salary band for Crown prosecutors (the lowest grade qualified staff).

"£9,700 - £14,000 is too low. Should be £12,000 - £16,000".

(b) Promotion prosects: Establishment of one Senior Crown Prosecutor for every three Crown Prosecutors. "Through grading", i.e. virtually automatic promotion on length of service (like 2/Lieutenant to Lieutenant) "desired, as in Government Legal Service. More senior grades desired for higher ranks. Proposals create insufficiently attractive career structure".

(c) Pay protection: (Transferees retain any differential between existing pay from local authority and the pay for the grade they assume in the Service). "10 years not enough, should be for life, as has been offered in reorganisation of Government Legal Service, from which transferees to new service from Metropolitan Police Solicitors Department will benefit."

ii. Ancillary matters:

These embrace such items as prescribed hours and overtime payments, leave entitlement, seniority. mobility requirements and provision for travel on official business (e.g. car loans).

5. I concluded that our notified proposals in each of the principal matters needed to be improved. I have negotiated with the Treasury the following improvments:

(a) Salary band for Crown Prosecutors £10,500 - £15,000.

(b) Establishment to be one Senior Crown Prosecutor to two Crown Prosecutors. This will also produce a few improvments in gradings for more senior posts.

(c) Pay protection to be for 10 years, but thereafter a "mark time"arrangement will apply in place of the four year taper presently proposed. The effect will be that the differential progressively diminishes after 10 years with each increase in the pay of the relevant Civil Service grade.

6. As regards ancillary matters, we had not previously published proposals. Almost all the Unions' requirements at present specified to me under this heading are acceptable to the Treasury. The most important matter remaining to be resolved is the provision of transport for Prosecutors. Here, it is proposed that there should be a feasibility study to identify the most appropriate arrangement.

7. It is essential to avoid creating a pay bonanza at the taxpayers'expense occasioned by the new Service's inception. Equally we must ensure that we get and keep the people we need. A package comprising the negotiated improvments in the principal matters, and our proposals as to ancillary matters, represents in my judgment the point at which each of these objectives is achieved. This view is supported by the DPP and Mr Gandy. The Unions will, however, certainly continue to complain and campaign, notably about inadequate career prospects. Pay protection for life has a presentational force disproportionate either to its likely take-up after 10 years or its cost. There is no doubt it would help considerably. Nevertheless, I recognise that it is important to the Treasury not to concede it here, and have accepted their position. There will also continue to be complaints about haste, and the non-observance of formal negotiating procedures. These, however, have been dictated by the need to start the Service on 1 April 1986 in the areas at present subject to Metropolitan Councils, and the Unions know this.

8. I therefore propose to announce these terms soon, notifying the Unions a short time ahead of publication. I shall arrange for a further briefing note to go to our colleagues in the House of Commons at the same time.

Patrick Mayhew

4 November 1985


04. XI
PM
85

cc HB

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

31 October 1985

NBM

Dear Tim,

I have shown to the Lord President the note Attached. you commissioned from the Home Office following the discussion between the Lord President and the Prime Minister about implementation of the Police and Criminal Evidence Act. The Lord President was very grateful for the note, which confirms his own impression that in general police anxieties about the Act seem to have abated considerably. But he remains concerned about the risk that difficulties over the duty solicitor scheme might yet jeopardise a smooth transition to the new arrangements. No doubt the Lord Chancellor's Department, whose responsibility this is, are doing all they can to have a workable scheme in place for the date of implementation.

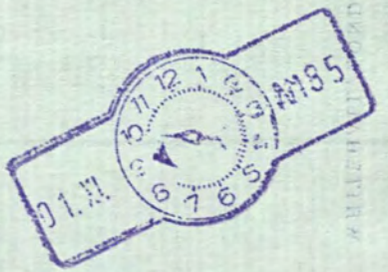
I am sending a copy of this letter to Richard Stoate and to Stephen Boys-Smith.

Yours sincerely

Joan.

JOAN MACNAUGHTON
Private Secretary

T Flesher Esq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From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

25 October 1985

Prime Minister

You were warned about borders as the price.
25/10

Dear Tim

POLICE AND CRIMINAL EVIDENCE ACT

You asked for a note on police anxieties about the Act.

The aim of the Act is to clarify police powers, and to extend them where they are inadequate. It also provides safeguards designed to maintain public confidence in police operations, and thus to assist in the overall police task. The police are broadly satisfied with the powers, but there remains some discontent over aspects of the safeguards.

The stop and search powers are the most significant new power provided by the Act: such powers have only existed previously in London and a few major centres and they have not included searches for offensive weapons. The Act makes good both these deficiencies, but lays down clear associated procedures in a Code of Practice. Although these are new powers in theory, practice has often been to act as though they did exist. The police feel that the Act and Code may serve to focus public attention on the limited circumstances in which they may lawfully be used. The Government's view has been that stop and search powers have a value in the investigation and prevention of offences, but that they have to be used with the restraint required by the Act if they are not to damage police/public relations.

Tim Flesher, Esq

The Act creates a new power to enter premises under warrant to search for evidence of serious crime. This was the area which led to the greatest criticism of the original Police and Criminal Evidence Bill, and the provisions were subsequently modified to protect personal and confidential material. Some police officers argue that these limitations have made the power complex and unworkable. The safeguards apply, however, to the sort of material (for example, in the hands of doctors and the clergy) to which the police would not in any case have sought access. Though the power may not be used widely, it does give the police an important tool previously unavailable to them for use in major investigations.

The Act also creates a new scheme of general application to powers of arrest: for the first time the possibility of arrest will exist for all offences, rather than to only some. The new arrest powers require some learning by existing officers, but it should be easier for recruits to assimilate, and it will provide a more effective means of enforcing a range of offences where the police have hitherto been virtually powerless.

The main concern of the police service has focussed on the Act's detention provisions. The intention is to establish a firm basis for the powers of the police over suspects at police stations. The Act makes clear the circumstances in which suspects may be searched, the length of time for which they may be held and the precise circumstances in which access to a lawyer may be denied. These are areas where the previous law was uncertain, and it should be of advantage to the police to know exactly what they are entitled to do with prisoners.

The converse of this is the emphasis placed by the Act and the Codes upon proper documentation of the decisions taken about prisoners. It is this above all which has occasioned police anxiety. Breach of the provisions of the Codes of Practice renders an officer liable to disciplinary proceedings, and there is concern that minor deviation from these precise guidelines will lead to the penalising of the officer concerned and to the tainting of any evidence obtained from interrogation. Experience already suggests that many of these anxieties will lessen as the police become used to the provisions. The longer

that individual forces have been experimenting with the provisions, the less anxiety there appears to be and the greater the recognition that the scheme is in many respects a rationalisation of existing procedures. There is also some recognition that the provisions need to be approached sensibly, and not blamed for their inability to cope with circumstances in which no procedures could have coped perfectly. (In the aftermath of the Brixton riots, for example, great practical difficulties were encountered at the one police station to which all those arrested were taken: the police now recognise that the difficulties encountered stemmed from the decision to concentrate prisoners in this way and that in a future incident dispersal to a number of stations would be preferable.)

It is likely that police concern over the supposed new pressures being placed upon them by the provision for the custody officer (on whom the main responsibility for the correct treatment of prisoners will rest) will continue for some time. The Home Office has always acknowledged that the custody officer function might require some additional sergeant posts in some forces, and has indicated that consideration would be given on merits to any consequent applications for changes in complement. Authority has been given to variations in complement in a few forces for reasons associated with implementation of the Act, and a close watch will continue to be kept on any evidence that the provisions are tending to confine officers to police station duties. But the general impression is that the service is (perhaps understandably) playing safe in the manpower it is devoting to this task. It is likely that with greater operational experience the police will find not only that there are not the pitfalls now being predicted, but that the Act will as intended increase professionalism among officers.

The Act continues to be criticised by those primarily interested in civil liberties because of the new powers it gives to the police. Police forces by contrast use the safeguards in the Act as an argument in their campaigns for greater resources. Only experience will tell whether their worries prove correct once they become accustomed to the operation of the Act, and this is one of the points which will fall to be thoroughly examined when proposals for new manpower are assessed.

E.R.

As the Prime Minister will be aware, certain problems over the duty solicitor scheme associated with the Act surfaced late in the day. A note about the scheme and the preparations for its implementation is attached.

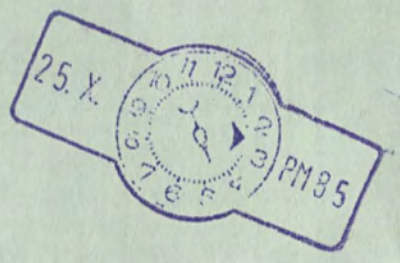
Yours,
Stephen

S W BOYS SMITH

E.R.

DUTY SOLICITOR SCHEME

The right of access to legal advice is one of the principal safeguards in the Act for persons at police stations, and the Act provides for a duty solicitor scheme to ensure that legal advice is readily available whenever required. This was one of the recommendations for the Royal Commission on Criminal Procedure, and the Government's commitment to it was a key element in the Parliamentary passage of the Bill. Field trials earlier in the year showed, however, that the Royal Commission's estimate of the costs, on which subsequent calculations had been based, was likely to prove a serious underestimate. In July the Lord Chancellor announced that the scheme would operate in a manner designed to control demands on legal aid, by placing a limit on the amount of advice which could be given in less serious cases. Although this still represents a significant increase in the amount of advice being given to suspects, the Law Society, who will have to operate the scheme, have argued that the arrangements fall short of the protection which should be available. They are likely to make an issue of the restrictions when the Codes come to be debated in November. The signs are that in some areas, notably London, a full duty solicitor scheme may not be in operation by 1 January next year. From the police's point of view the scheme offers few problems and is generally welcomed: it will simplify the process of contacting a lawyer, and having a lawyer present is seen by most police officers as being as much a safeguard for them as it is for the suspect.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10 DOWNING STREET

THE PRIME MINISTER

15 October 1985

Dear Mr. Timms,

Thank you for your letter of 24 September, enclosing a copy of the resolution passed by members of your Society concerning the implications for the career structure of the Crown Prosecution Service arising out of the present proposals as to salary scales and grading.

I reaffirm my view that the provision of adequate resources for the maintenance of law and order must be a fundamental priority for any Government. Our intention is that the staff who will serve in the Crown Prosecution Service should receive fair and reasonable remuneration, having regard both to the job to be done and the need to attract and retain staff of the requisite calibre. This is completely in accord with what the Solicitor General told the House of Commons in April.

I understand that the Law Officers received a delegation from your Society early in September when these and other areas of difficulty were discussed. Officials also attended your recent Annual Conference. The Government shares your concern for the efficiency and effectiveness of the new Service. The Solicitor General is giving careful consideration to all which was said to him and to officials,

SRW

and will also give full weight to the more detailed information you have agreed to collate and provide as to the practical effect on your members of the present proposals.

In these circumstances I do not think that the meeting you seek would serve any useful purpose, but I can assure you that I do take a close interest in these matters and shall continue to do so.

Yours sincerely

Margaret Thatcher

J.M. Timmons, Esq.,

SRW

10 DOWNING STREET

From the Private Secretary 14 October 1985

INLAND REVENUE ENFORCEMENT

Thank you for your letter of 8 October. It would be helpful to me to have please some guidance on the likely timetable for discussion of the proposals and for consultation.

(DAVID NORGROVE)

A.W. Kuczys, Esq.,
HM Treasury.

1290/6

Treasury Chambers, Parliament Street, SW1P 3AG

T Flesher Esq
Private Secretary
10 Downing Street
LONDON
SW1

10 October 1985

Dear Tim

CROWN PROSECUTION SERVICE

I have seen David Norgrove's letter of 7 October to Tony Kuczys.

The Chief Secretary has asked me to let you have one comment on the proposed draft reply from the Prime Minister to the Prosecuting Solicitor's Society. He considers the reference in paragraph 2 to the provision of adequate resources for the maintenance of law and order unexceptionable in general terms. But he is clear that its translation into pay rates must depend on the job to be done as well as the aspirations of those concerned. The Society may seize on the law and order reference as support for any claim they choose to pursue. For this reason he suggests as a minumum that the words "to the job to be done" be substituted for "both to market rates" in the second paragraph.

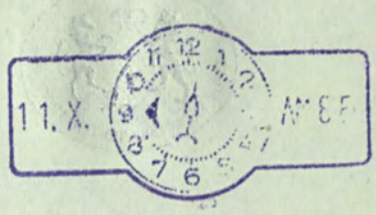
The Chief Secretary has no other objection to the references to pay and grading, which are of course a Treasury responsibility although the Treasury was not consulted at official level or otherwise on the draft reply put to you. It may be worth pointing out that Treasury officials have been closely involved in preparations for the setting up of the Crown Prosecution Service since the decision was taken in October 1983. Pay and grading proposals are based on detailed studies. The Chief Secretary takes the view that we have to pay the rate for the job against the criteria of the need to recruit, motivate and retain. To do otherwise would be expensive and damaging to the civil service pay and management regime. There is some evidence that some local authority pay rates in this area may be over the odds, and the pay protection arrangements which have been offered are in fact a concession to meet this. While the Society are undoubtedly concerned that some of their members will be on pay protection, we nevertheless expect the great majority of them to transfer with their jobs; and the Government will need to take the initiative to lower the exaggerated expectations of the solicitors which are reflected in their approach to the Prime Minister.

The Chief Secretary is taking up these points separately with the Solicitor General.

Yours sincerely

Richard Broadbent

R J BROADBENT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From the Solicitor General

9/10

WMTF seen 9/10

Dear Colleague,

CROWN PROSECUTION SERVICE

1. This letter is about anxieties currently being voiced by prosecuting solicitors about terms and conditions of service in the new Crown Prosecution Service.

2. The Prosecution of Offences Act 1985 provides for an independent prosecution service. This fulfils an undertaking given by the Government during the passage of the Police and Criminal Evidence Bill. We are committed to 1st April 1986 as the introduction date for the Crown Prosecution Service in the six Metropolitan counties and to 1st October 1986 for London and the remainder of England and Wales. Its Head will be the Director of Public Prosecutions, under the superintendence of the Attorney General.

3. Staff presently employed in prosecuting solicitors' departments are intended to transfer to the Service and become civil servants. Their representatives complain of the arrangements proposed as to grading and salaries, inadequate consultations by the DPP, and inadequate information, particularly as regards matters which are ancillary to their terms and conditions of service but which are important to them when comparing posts in the new Service with their existing jobs.

4. I have arranged to meet the Crown Prosecution Service Trade Union Group and shall explain to them the need for such a tight timetable - it is designed to dovetail with the abolition of the Metropolitan counties - and to discuss with them their

anxieties. As regards the salary and gradings proposals, I have already received a delegation from the Prosecuting Solicitors' Society of England and Wales (PSSEW), and officials thereafter attended their annual conference. As regards ancillary matters, the DPP hopes to make proposals quite shortly.

5. It remains the Government's intention that the staff who will serve in the Crown Prosecution Service should receive fair and reasonable remuneration, having regard both to market rates and the need to attract and retain staff of the requisite calibre. This accords with what we have always said, in the House and outside. There is general support on the staff side for the principle of an independent prosecuting service. I shall be giving careful consideration to the things their representatives say to me about the employment package which it should provide.

6. I thought I would, in Michael Havers' absence in hospital, let you know the present position, since you will have a personal interest in the subject and may additionally need to respond to letters.

Yours,

Patrick

8 October 1985

RT8.10

cc PM

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

8 October 1985

David Norgrove Esq.
10 Downing Street
LONDON
SW1

Prime Minister 2
To note where this now stands.

IRN
9/10.

Dear David

INLAND REVENUE ENFORCEMENT

Thank you for your letter of 26 September, about the possibility of a tax amnesty and asking about progress generally on the proposals to implement the Keith Committee Report.

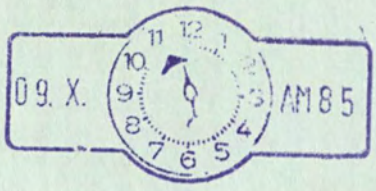
A lot of work has been done on the Keith recommendations, including extensive consultations with the main representative bodies. The Chancellor has now asked the Economic Secretary to review the whole of the issues with the objective of constructing an acceptable package of measures, and to report back to him as soon as possible. The review will include the scope for an amnesty. The Chancellor will then let the Prime Minister have a note of his proposals, which they can discuss. In the circumstances, could we leave fixing a date until a little later?

Yours sincerely
Terry Kuczys

A W KUCZYS
Private Secretary

HOME AFFAIRS

RIGHTS OF ENTRY PT 2



David
Has Tony spoken?
VJ 11/10

File

089

10 DOWNING STREET

From the Private Secretary

7 October 1985

CROWN PROSECUTION SERVICE

You will wish to be aware of this correspondence. If you have any comments on the draft reply, could I have them please by close of business on Thursday, 10 October.

David Norgrove

Tony Kuczys, Esq.,
H.M. Treasury.

BM

SOLICITOR GENERAL

PRIME MINISTER

1. Attached to this minute is a draft reply to the letter you have received from the President of the Prosecuting Solicitors' Society of England and Wales (PSSEW) concerning the Crown Prosecution Service. It is as reassuring as we can make it. But the process of establishing the Crown Prosecution Service in the required time has run into serious, though not insuperable, difficulties. I think you should be aware of them and of the steps I am taking to overcome them.

2. You will recall that the Prosecution of Offences Act 1985 provides for an independent prosecution service. This fulfils an undertaking we gave during the passage of the Police and Criminal Evidence Bill. We are committed to 1 April 1986 as the introduction date for the six Metropolitan counties and to 1 October 1986 for London and the remainder of England and Wales. The Service will be headed by the Director of Public Prosecutions under the superintendence of the Attorney General.

3. Prosecuting solicitors are mostly employed by local authorities. We look to them to transfer into the new Service. Their three ostensible reasons for the discontent which Mr Timmons describes are centred as follows:

(i) Terms and Conditions of Employment:

Only the basic components (grading and associated salaries) have as yet been agreed as between the DPP and the Treasury. The resulting career structure proposed to the PSSEW and unions is seen by them as markedly inferior and unattractive. At the bottom end, pay scales are said to be too low to

attract recruits. Higher up, the posts are seen as a down-grading of their work, although "pay protection" for 10 years will apply.

(ii) Lack of Information:

Ancillary terms and conditions have not yet been determined, eg seniority, allowances and mobility requirements. In the absence of proposals PSSEW and unions have not been able to see how posts in the new Service will compare with their existing jobs.

(iii) Lack of Consultation:

The need to dovetail the establishment of the Service with the abolition of the Metropolitan county councils has imposed a tight timetable upon consultation, eg upon selection procedures for posts and on the content of the transfer regulations. Instructions to the Chief Crown Prosecutors designate for the Metropolitan counties as to staffing levels in their areas have had to be issued by the DPP without consultation.

4. On 2 October NALGO put out a press statement referring to their grievances and indicating withdrawal of cooperation with the DPP. They seek thereby to secure consultation. There is general support for a Crown Prosecution Service, but disgruntlement over the above matters.

5. It will be necessary to commence the transfer procedures for the Metropolitan counties not later than 1 January 1986. By that date we must notify individual local government employees

of the available posts and grades in the Service, together with the terms and conditions which will govern their transfer and assimilation into the civil service. The transfer regulations (negative resolution procedure) must by then be in place.

6. I have taken the following steps:

(i) I have instructed the DPP that the Service must be established on time. (The DPP is himself anxious to secure this).

(ii) I have arranged to meet the Crown Prosecution Service Trade Union Group on 8 October. I shall listen with sympathy and explain.

(iii) I have asked the Director to seek immediately the cooperation of central departments to form a working group of officials to hammer out a package of ancillary terms and conditions which can be put to the unions within two or three weeks. In my view, it is essential we proceed in this way rather than by the more conventional method of separate negotiations between the Director and departments concerned on each aspect that has to be covered.

(iv) I am preparing briefing for our backbenchers, with the approval of the Chief Whip, in view of the campaign about to be conducted by the PSSEW and the unions.

7. It would be extremely damaging if we postponed the starting date, or if the Service started inefficiently and with an uncommitted staff. I am resolved that this shall not happen. The DPP advises me that we can keep the date, but only if we

promptly determine internally the outstanding components of the package and are then prepared to drive resolutely ahead without necessarily attaining the agreement of the unions. I have instructed that this course be followed.

8. My provisional assessment is that, while the unions have no seriously troublesome grievance over information or consultation, given the political need to start on 1 April 1986, the reverse may well be true as regards some of the pay and grading proposals put forward. I am well aware that the unions will naturally try their hardest for the best terms possible. We, for our part, while going no further than necessary, must offer terms that will suffice to attract, and retain in good heart, staff of the necessary quality - something we have always accepted in the House and outside. This is a matter for careful judgement.

9. To this end I am engaged in an urgent assessment of whether, in order to achieve the minimum attractive power necessary, our present proposals need to be improved and, if so, in what respects. It is likely that the unions' real focus will be on pay and grading, rather than on the ancilliaries. If I conclude that we must improve our proposals in any respect before inviting transfer in January 1986, I shall at once seek Treasury approval, and I have notified the Chief Secretary of this possibility.

Patrick Mayhew

4 Oct 85

Law Officers Department.

L.O.D. **No. 6**

DRAFT

LETTER FROM: THE PRIME MINISTER

TO: THE PRESIDENT OF THE PROSECUTING SOLICITORS' SOCIETY OF ENGLAND AND WALES

Thank you for your letter of 24 September 1985, enclosing a copy of the resolution passed by members of your Society concerning the implications for the career structure of the Crown Prosecution Service arising out of the present proposals as to salary scales and grading.

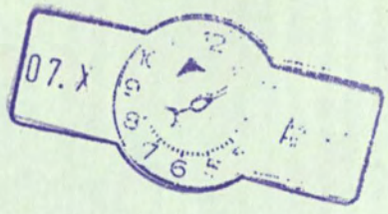
I reaffirm my view that the provision of adequate resources for the maintenance of law and order must be a fundamental priority for any Government. Our intention is that the staff who will serve in the Crown Prosecution Service should receive fair and reasonable remuneration, having regard both to ~~market rates~~ the job to be done and the need to attract and retain staff of the requisite calibre. This is completely in accord with what the Solicitor General told the House of Commons in April.

I understand that the Law Officers received a delegation from your Society early in September when these and other areas of difficulty were discussed. Officials also attended your recent

.../annual

annual Conference. The Government shares your concern for the efficiency and effectiveness of the new Service. The Solicitor General is giving careful consideration to all which was said to him and to officials, and will also give full weight to the more detailed information you have agreed to collate and provide as to the practical effect on your members of the present proposals.

In these circumstances I do not think that the meeting you seek would serve any useful purpose, but I can assure you that I do take a close interest in these matters and shall continue to do so.


07. X

J. M. TIMMONS

14/10

6

10 DOWNING STREET

From the Private Secretary

30 September 1985

I attach a copy of a letter the Prime Minister has received from Mr J.M. Timmons, President of the Prosecuting Solicitors' Society of England and Wales.

I should be grateful if you could let us have a draft Private Secretary reply, to reach us by Monday 14 October.

I am copying this letter and enclosure to Claire Pelham (Home Office).

Tim Flesher

Henry Steel, Esq., CMG, OBE.,
Law Officers' Department.

6

CONFIDENTIAL

10 DOWNING STREET

From the Private Secretary

26 September 1985

Inland Revenue Enforcement

The Prime Minister has mentioned to the Chancellor the idea that there might be a tax amnesty which would operate in the period before April 1986. People would be warned that thereafter tax legislation would be enforced very strictly. The Chancellor undertook to consider this.

I am not aware that we have yet had a reply to Andrew Turnbull's letter to Rachel Lomax of 11 July, also about Inland Revenue enforcement. Andrew Turnbull's letter mentioned that he would be in touch with Rachel to agree a timetable for work on ensuring the right balance in provisions to enact the Keith proposals. Could you let me know where that now stands?

(David Norgrove)

Tony Kuczys, Esq.,
HM Treasury

CONFIDENTIAL

R30

THE PROSECUTING SOLICITORS' SOCIETY OF ENGLAND AND WALES

Your Ref:
Our Ref: JMT/ABD

Park House,
20 Park Place,
CARDIFF,
CF1 3PL.

Tel. 394011

24th September 1985

Dear Prime Minister,

As you know the Crown Prosecution Service is due to start in certain parts of the country on the 1st April 1986. At the moment, outside London, there are approximately 800 Prosecuting Solicitors and they will form the main part of the new service. Unfortunately the recommendations for salaries and career structures which have emerged from the Treasury are so unsatisfactory that the morale of the members of our Society could not be lower. Lawyers have already started to go elsewhere, and I have no doubt that there will be the greatest difficulty in recruiting and retaining the staff of the necessary calibre.

At the Annual General Meeting of our Society on the 15th September 1985, the attached Resolution was passed unanimously.

I have been in touch with Sir Michael Havers about this matter, but I have also been instructed by the members of our Society to convey to you their profound disquiet. From different parts of the country I have received expressions of anger, frustration and disillusionment.

It is extremely sad that this mis-calculation by the Treasury is now going to jeopardise the success of the service which was meant to act as a balance to the powers given to the police under the Police Criminal Evidence Act 1984.

I am very conscious of the fact that you are very heavily committed to deal with matters of national and international importance, but we are all concerned that the highest possible standards must be observed in the administration of law, and

Cont/.....

therefore, we would be most grateful if you would spare some time to allow representatives of the Society to see you, and to emphasise the present state of the low morale.

Yours sincerely,

John Timmons

PRESIDENT

Prime Minister,
House of Commons,
LONDON.

RESOLUTION

In order to provide a safeguard against the misuse of the enhanced Police powers under the Police and Criminal Evidence Act 1984, H.M. Government committed itself to establishing a Crown Prosecution Service which would be so financed as to ensure the recruitment of professional staff of a calibre commensurate with the high standards to be expected of the Service, and to provide an attractive career structure.

The Society noted the statement of the Solicitor General, Sir Patrick Mayhew, in the House of Commons on 16th April, 1985: "It is important that Chief Crown Prosecutors and all prosecuting members of the new Service should be remunerated on a basis that ensures that they provide the high standards that will be required." In the light of such assurances the Society expresses deep concern regarding current intimations as to the conditions of service which will govern transferees and recruits into the new Service, and in particular, to the gross disparities which will emerge in comparison with existing legal professional staff in other Civil Service Departments.

Comparisons of both career prospects and scales of remuneration lead inevitably to the conclusion that H.M. Government is in the process of creating a second class Service unsuited to exercise substantial statutory powers affecting the liberty of the individual.

Unless there is an attractive career structure at least commensurate with the terms and conditions enjoyed by lawyers presently employed in the Civil Service, the Society considers that the new Service cannot hope to recruit and retain lawyers of appropriate calibre and experience.

Having co-operated with great enthusiasm throughout the formative stages of the new Service, this Society must now give voice to the profound disquiet and disillusio felt by its national membership.

The Society considers that the present proposals are irreconcilable with the Prime Minister's reported statement on 10th August, 1985: "We have never scrimped in any way on resources for law and order."

File VAT File

Prime Minister (2)

To be aware that Chancellor is issuing a consultative document on VAT collection.

VAT

19/11

Treasury Chambers, Parliament Street, SW1P 3AG

Private Secretary
10 Downing Street
LONDON SW1

16 November 1984

Dear Private Secretary,

The Minister of State has asked me to let you have for information an advance copy of the attached consultative paper which Customs and Excise hope to publish next week, with the Chancellor's authority, setting out proposals for implementing those parts of the Report of the Keith Committee which deal mainly with VAT.

I am copying this to the Private Secretaries to the Lord Chancellor, Secretaries of State for Trade and Industry, Scotland, Paymaster General and to the Chief Whip and Law Officers.

Yours ever

M W Norgrove

M W NORGROVE
Private Secretary

CONFIDENTIAL

THE COLLECTION OF VALUE ADDED TAX

Proposals for implementing the Customs and Excise Recommendations in Volumes 1 and 2 of the Keith Committee's Report.

(Printer's Copy)

CONTENTS

PROPOSALS TO IMPROVE THE COLLECTION OF VALUE ADDED TAX

Foreword by the Chancellor of the Exchequer

1. The first two volumes of the report of the Keith Committee were published in March 1983. The Committee's proposals were detailed and far-reaching, and I decided that the trade and professional bodies concerned, as well as individuals, should be given the fullest opportunity to comment on them before any conclusions were reached. On my instructions, the Revenue Departments carried out an extensive consultation exercise, and reported the outcome to me in March 1984. In reply to a Parliamentary Question on 18 May, I said that the Government hoped to announce conclusions on the Customs and Excise recommendations - mainly dealing with VAT - towards the end of 1984, in time for any necessary legislation to be included in the 1985 Finance Bill. My proposals, together with draft implementing clauses, are set out in this paper. Consultations on the Inland Revenue recommendations are continuing, and I hope to bring forward proposals on them in 1985, in time for legislation as necessary in the 1986 Finance Bill. Meanwhile, the proposals set out in this paper on VAT should not in any way be taken as prejudging the Government's likely conclusions in relation to the rather different taxes administered by the Inland Revenue.

2. The Government is grateful to Lord Keith and his colleagues for their careful and detailed analysis of the present administration of VAT, and to all those who have commented on their proposals. In considering the Committee's recommendations, I have been very much aware that a tax of such general application as VAT can be operated successfully only if it has a high degree of public acceptance. The tax should be seen to be evenly enforced; those traders who conscientiously comply with their legal obligations must not be put at a disadvantage compared with their competitors who do not; and the powers of enforcement needed for this purpose, while kept to the minimum, should be effective, certain in their application, and provide adequate safeguards for the taxpayer in his relations with Customs and Excise.

3. The Keith Committee were much concerned to balance the proposed strengthening of the powers of the Customs and Excise in certain respects with increased protection for the taxpayer. Almost all those who commented during the consultation exercise emphasised the importance of dealing with the recommendations as a package. I fully accept that approach, and in the very limited modifications which I propose to make

to the original recommendations, I have sought to tilt the overall balance further in the taxpayer's favour. While I have decided that shifting the responsibility for the issue of VAT search warrants from magistrates to circuit judges would increase the burden on the higher judiciary without materially increasing the safeguards for the citizen, I have also decided that civil recovery actions for VAT debts should continue to be a matter for the High Court rather than the VAT Tribunals; that the names of those accepting civil penalties or compounded settlements in fraud cases should not automatically be published; and that in the third test for the proposed new civil default of "gross negligence" (to which I intend to give the more accurate and neutral title of "serious misdeclaration"), the reckonable defaults should be limited to those which equal or exceed 5 % of the true amounts of tax due. In addition, the Customs and Excise should have much wider powers of general mitigation than the Committee envisaged.

4. Subject to these and the other modifications explained later in this paper, and to any further representations which may be made by interested parties, I now intend to bring forward the draft legislation set out in Appendix 5 as part of next year's Finance Bill. I believe that these proposals are an important and necessary stage in the evolution of value added tax, and will substantially improve both the fairness and the efficiency of its administration. On that basis, I commend them to all taxpayers and their professional advisers as a positive but measured response to the concern expressed over the years, not least by the Public Accounts Committee of the House of Commons, about the persistent non-compliance with VAT law to the detriment both of the Exchequer and of those taxpayers who are careful to observe their legal obligations.

HM Treasury
November 1984

NIGEL LAWSON

PROPOSALS TO IMPROVE THE COLLECTION OF VALUE ADDED TAX

Introduction

1. This paper and the draft clauses at Appendix 5 deal with those recommendations relating to Customs and Excise in volumes 1 and 2 of the Report of the Keith Committee on the Enforcement Powers of the Revenue Departments (Cmnd. 8822). These recommendations are concerned mainly with the administration of the collection of value added tax (VAT).

2. Information on the background to and work of the Keith Committee, including its membership and terms of reference, will be found at Appendix 1. A note on the consultation exercise referred to by the Chancellor is at Appendix 2.

The Scale of the Compliance Problem

3. There are currently some 1.4 million traders registered for VAT providing an estimated net yield in 1984-1985 of £18 billion. Whilst the Keith Committee generally approved of the way in which Customs and Excise use their existing powers to administer the tax, it expressed concern at the low level of compliance with the legal requirements for the furnishing of returns and the making of payments by the statutory due date. On more than one occasion this has been a matter for comment by the Committee of Public Accounts (PAC), most recently in their Thirty-Fourth Report of the 1983-84 Session (House of Commons Paper 430) in which they strongly supported the general approach of the Keith Committee.

4. In spite of the successful efforts made by the Department in recent years to improve compliance within the existing legal framework, over three quarters of those required to make quarterly returns and net payments of VAT do so late, with the result that on average during 1983-1984, some £1.5 billion of tax due was outstanding at any one time. Although defaults of this kind technically constitute criminal offences it is practicable to prosecute in only a small proportion of the most serious cases. Most traders who submit their returns late, or who underdeclare their liability, run little risk of any financial penalty. The scope for interest-free use of tax collected from customers is the single most important cause of the present unacceptably low level of VAT compliance.

5. Against this background, the Government has accepted the case made by the Keith Committee for the introduction of an automatic, progressive, tax-geared surcharge for late payment or late submission of returns and the replacement of the present criminal code of regulatory offences by a new and more readily enforceable civil code providing for interest on underdeclarations and graduated tax-geared or frequency related penalties, determined according to objective criteria, but with greater scope for mitigation than envisaged by the Committee. Taken with the further safeguards recommended by the Committee, these arrangements would have important benefits for both taxpayers and the Exchequer. The taxpayer would know with certainty that particular consequences would follow particular defaults; the enforcement of VAT would become much more uniform; and the stigma of criminality would be removed from all but the most serious VAT offences. From the Exchequer's point of view, the incentive to prompt compliance should greatly improve the flow of revenue, and should enable considerable savings of staff engaged on enforcement work to be made.

6. The Committee's recommendations are a carefully considered package designed to improve the effectiveness of the VAT system and to provide extra safeguards for the taxpayer. Taking account of the comments made during the consultation exercise, it is proposed to seek powers to implement them as a balanced package in the 1985 Finance Bill subject to the reservations noted in paragraphs 7 and 11 below and to the modifications referred to in Appendix 3. Implementation of the default surcharge, the repayment supplement, interest and serious misdeclaration proposals will need to be phased in over a two year period because of the substantial accounting and procedural changes involved. A detailed commentary on each recommendation and the action proposed is set out in Appendix 3 under seven broad subject headings. The recommendations relating to Customs and Excise in volumes 1 and 2 of the Keith Committee's Report and the Government's proposals are listed at Appendix 4.

Recommendations not accepted by the Government or for further consideration

7. The recommendations dealing with professional privilege affect both Customs and Excise and the Inland Revenue, and require further consultation with the professional bodies concerned before conclusions can be reached. Any necessary legislative proposals will be brought forward in the 1986 Finance Bill. A further group of recommendations dealing with the conduct of criminal investigations has been wholly or partly subsumed in the Police and Criminal Evidence Act 1984 while others require experience of the

working of that Act before final conclusions can be reached. For the reason given in Appendix 3, VAT search warrants (like police warrants) will continue to be issued by magistrates, and not by circuit judges, as recommended by the Committee. Recommendation 38 (publication of names of those making settlements in fraud cases) was almost universally opposed by the bodies who commented during the consultation exercise. It would probably result in a large number of alleged offenders rejecting settlement offers or appealing to VAT Tribunals, and it is not therefore proposed to implement it.

8. The second part of recommendation 51 (orders for payment to be granted by the Tribunal) was intended to simplify the recovery of VAT debts by Customs and Excise. The existing procedures for recovery through the High Court are, however, satisfactory from the Department's point of view and offer some additional assurance for the taxpayer. This proposal will not, therefore, be pursued further.

9. Recommendation 29 proposes a new civil default of gross negligence (referred to in this paper as serious misdeclaration) which would apply to large or persistent VAT underdeclarations or over-claims. The Committee recognized that the objective tests it proposed might need to be amended. The Government proposes to make the reckonable defaults in the third test subject to a de minimis limit. The draft legislation provides for the thresholds for the first two tests to be as recommended by the Committee, but views on whether this would be appropriate would be welcomed. The tests would in any case be subject to review in the light of experience.

10. Recommendations 35(d) and 49(d) (personal liability of directors for civil penalties and VAT debts) have been overtaken by the Government's proposals for the reform of insolvency law (Cmnd. 9175).

11. The concern reflected in recommendation 44 (disclosure of information to foreign revenue authorities) is recognized and further consideration will be given to its implementation when volume 4 of the Committee's Report (which deals with other areas of Customs and Excise work) is received.

Draft Clauses

12. Draft clauses dealing with those recommendations whose implementation requires legislation in the 1985 Finance Bill appear at Appendix 5. The Finance Bill may also include other clauses stemming from those Keith recommendations which are currently under consideration.

Further Representations

13. Detailed comments on the draft clauses should be sent to HM Customs and Excise, VAT Control Division A, Alexander House, Victoria Avenue, Southend-on-Sea, Essex SS99 1AA, by 7 January 1985. The Department will in due course report to Ministers on the main issues raised, and final legislative proposals will be published in the 1985 Finance Bill.

THE KEITH COMMITTEE

1. In July 1980, the Government appointed an independent committee under the chairmanship of Lord Keith of Kinkel to undertake a review of the enforcement procedures of the Inland Revenue and Customs and Excise Departments.

2. The Committee's terms of reference were:

> "To enquire into the tax enforcement powers of the Board of Inland Revenue and the Board of Customs and Excise, including: powers of investigation into the accuracy of returns including powers to call for information and documents; powers of entry and of search of premises and persons; powers relating to cases of fraud, wilful default or neglect and to cases of reckless action: but not including the ordinary processes of collecting outstanding tax and the charge of interest thereon. To consider whether these powers are suited to their purposes having regard both to the need to ensure compliance with the law and to avoid excessive burdens upon taxpayers and to make recommendations."

3. The chairman was The Right Honourable The Lord Keith of Kinkel PC, a Lord of Appeal. The other members were:

> The Lord Allen of Fallowfield CBE, a former Crown Estates Commissioner and former General Secretary of the Union of Shop, Distributive and Allied Workers;
>
> Mr Brian R Crack BSc (Econ) FCA, an accountant and businessman;
>
> Mr John F Avery Jones MA LLB FTII, a solicitor and taxation expert; and
>
> Mr Ernest V Symons CB BA, a former director-general of Inland Revenue (1975-1977).

4. The Committee received written evidence from about 250 individuals and organisations, including bodies representative of the interests of business, trade and the professions, trade unions and the two Revenue Departments. There were 11 meetings to hear oral evidence.

5. The Committee's report will be in 4 volumes. Volumes 1 and 2 were published on 23 March 1983. These dealt with the main Inland Revenue taxes and, on the Customs and Excise side, primarily with VAT. Volume 3 (Cmnd.9120) dealing with the other Inland Revenue taxes was published on 18 January 1984, and the final volume, covering customs duties, excise duties and car tax is expected to be published shortly.

6. In volumes 1 and 2 the Committee made 59 recommendations on Customs and Excise (mainly VAT) matters and 99 on taxes administered by the Inland Revenue. Many of the recommendations require legislation before they can be implemented, others require changes in practice and some simply maintain the status quo.

7. Throughout the first two volumes of the report the Committee balanced the needs of the Revenue Departments with the rights of the taxpayer. Where it recommended new powers or the retention of existing ones, it generally proposed improved, and, where possible, external safeguards for the taxpayer. More effective penalties were proposed, combined with a reduction of official discretion in order to make the treatment of defaulting taxpayers more certain and more uniform. Another recurrent theme was that both Revenue Departments should, wherever possible, have the same precisely formulated powers, with corresponding safeguards for the taxpayer.

RESULTS OF THE CONSULTATION EXERCISE

1. In response to a Parliamentary Question on 29 July 1983, the then Financial Secretary to the Treasury invited interested parties to submit their comments on volumes 1 and 2 of the Keith Report to a joint working group of the Inland Revenue and Customs and Excise by 31 December 1983.

2. The joint working group reported the results of the consultation exercise to the Chancellor of the Exchequer in April 1984. Comments were received from a broad cross-section of interested parties representing industry, commerce and the professions, and from firms, companies and individuals. In all, 34 parties commented of whom about two thirds were representative bodies.

3. There was general agreement on the need to change the present rules for compliance with, and enforcement of, the income, corporation, capital gains and value added taxes. Although the reactions to individual proposals were predictably mixed and there were some reservations, the majority view was that, taken as a whole, the Report was fair and balanced, and that if the Government decided to implement its recommendations they should be treated as an integrated package of measures designed both to improve tax compliance and to provide enhanced safeguards for taxpayers. Further discussions with interested parties were suggested before decisions were made about certain recommendations (eg in the "privilege" area) and on proposals affecting the Inland Revenue.

4. The results of the consultation exercise were reported to the House of Commons by the Economic Secretary to the Treasury on 8 May 1984.

SUMMARIES OF THE VAT RECOMMENDATIONS

1. For the purposes of this paper the recommendations have been grouped under seven broad headings. In each group there is a brief statement of the need for the implementation of each recommendation or, where appropriate, reasons for its further consideration or, exceptionally, its rejection. The numbers quoted are those given by the Keith Committee to its Customs and Excise recommendations. The relevant group letter appears against each recommendation in Appendix 4.

A. Control and Information Powers

2. Recommendations

1 Retention of VAT records for up to six years.

3 VAT control visiting - to continue with improved powers and enhanced safeguards.

4 VAT control visiting - amended provisions.

5 VAT information powers - extension in respect of services and imported goods.

7 Access to, and checking of, computers, and admissibility in criminal proceedings of computer produced documents.

10 Proof of removal abroad to fulfil requirement to account for goods.

11 "Code of conduct" leaflet for VAT control visiting.

44 Notification to taxpayer before disclosure of information to foreign revenue authorities.

Subject to the passage of any necessary legislation, it is proposed to implement all these recommendations in 1985, except for recommendation 44, which will be considered further when volume 4 of the Committee's report has been received.

3. This group of recommendations aims to rationalise Customs' routine control powers and improve safeguards for the taxpayer. The recommendation to increase from three to six years the period for which traders must preserve their records (R1) reflects the reduction in the frequency of VAT inspection (control) visits to many traders. Section 12(9) of the Companies Act 1976 already requires many companies to preserve records for six years.

4. The Government accepts that VAT control visiting should continue (R3) with improved powers coupled with enhanced safeguards for the taxpayer (R4). The proposed power to require a trader to open and count the take of gaming machines at the request, and in the presence, of a Customs and Excise official would enable the tax liability to be checked. The absence of such a provision at present is a weakness which has resulted in losses of VAT. The clarification of the place for production of records and the introduction of a power to require production of records held by third parties are measures designed to improve the effectiveness of VAT administration.

5. The safeguards for the taxpayer and guidance in respect of VAT control visiting will be set out in a "code of conduct" pamphlet which will be sent prior to a visit (R11). It will include an outline of the powers of visiting VAT officers and a description of standard visit procedures to help taxpayers to make any necessary preparations. Legislation is not required.

6. Current VAT information powers in respect of services are limited to the consideration for the taxable supply and to basic information about the recipient of the supply. The present powers do not cover supplies claimed to be exempt or outside the scope of VAT. The extension of the powers to include exempt services and information about the services concerned (R5) would remove a serious limitation which has restricted the ability of Customs to check that the correct tax liability is being declared. (Reasonable claims to legal privilege for certain records will, however, continue to be respected - see Group F).

7. Access to computers (R7), which now hold much of the information previously held in account books and records, is essential to enable Customs to verify the data used to complete VAT returns. Volume 4 of the Keith Committee's Report will deal with other Customs and Excise areas of operation and proposals for the implementation of this recommendation may be delayed pending consideration of any similar recommendations which might be included in volume 4. Similarly, the publication of a draft clause has been postponed until that volume is available. The admissibility in criminal proceedings of copy and computer produced documents (also R7) is covered by Part VII of the Police and Criminal Evidence Act 1984.

8. The admission of certain evidence of removal abroad to account for goods received or imported, but not in stock, would remedy a legal defect (R10) which could operate to a taxpayer's detriment.

9. It is accepted that a taxpayer, other than in a case of fraud, should be notified when a foreign revenue authority requests commercially secret information about his business from Customs and Excise so that he has the opportunity to object (R44). The same situation could arise in respect of Customs duties and other charges levied at import or export, and the Government will await volume 4 of the Keith Committee's Report which deals with those areas of work before putting forward final proposals.

10. Interested parties who commented on the proposals in this group unanimously accepted recommendations 5, 10 and 11. A substantial majority were in favour of recommendations 1, 3, 4 and 44; one body opposed recommendation 3 and another recommendation 44. None was against recommendation 7, but a number of points were made concerning the timing of official visits, the level of training of visiting officials, compensation for damage etc.

B. Compliance and Collection

11. Recommendations

2 Higher assessments for repeated failure to furnish returns.

45 & 46 Implementation of Scottish Law Commission proposals on the recovery of taxes in Scotland.

47 Forcible entry to levy distress or to poind to be allowed only on warrant issued by a magistrate or Sheriff; penalty for breach of walking possession agreement.

49 Measures to counter the "phoenix syndrome" (traders who re-emerge under different company names having previously become insolvent with undischarged VAT debts).

50 Enhancement of VAT enforcement regime.

51 Enforcement of VAT Tribunal determinations and orders for payment.

The main thrust of all the recommendations in this group has been accepted.

12. When a trader fails to submit a return declaring his tax liability an assessment is issued to establish an enforceable tax debt. For many traders who pay assessments no further action is taken unless and until a control visit reveals that the amount paid on assessment was less than the true tax liability. Where there is a history of repeated payments of assessments it is likely that they are significantly less than the true tax liability. Graduated increases in assessments (R2) would encourage traders to submit returns, and thus provide a more accurate base for any subsequent assessments that may be necessary.

13. Although recommendations 45 and 46 are accepted in principle, it would not be appropriate to propose changes limited to VAT in advance of the final decisions on the recommendations of the Scottish Law Commission, especially since the Keith

Committee's proposals are intended to bring a greater measure of uniformity into the procedures for the recovery of taxes in Scotland, including those administered by the Inland Revenue. The legislative changes necessary to implement R45 and R46 are expected to be subsumed in the proposed (Scottish) Diligence Bill.

14. Forcible entry to levy distress (R47) is currently authorised by the Collector in charge of the local VAT office. Although this power is rarely used it is accepted that the authority of a magistrate should be obtained. In Scotland there is already judicial oversight of this power. The second part of the recommendation concerns breaches of "walking possession" agreements. A trader enters into such an agreement when he and Customs and Excise agree that distrained goods should remain temporarily in the trader's custody. This provides him with a brief respite in which to arrange payment of the debt without the immediate removal and sale of his goods. A penalty equal to half the tax due or other sum duly recoverable is proposed to protect goods subject to such agreements from unauthorised interference.

15. The typical "phoenix syndrome" case (R49) occurs when a company begins trading, builds up a significant tax debt, disposes of its assets and liquidates without payment of the tax due. Trading is then resumed by one or more of the directors of the previous company, often in the same premises and using the same equipment but under the protection of the limited liability of a new company. There is considerable scope for repeated cycles of unpaid tax liabilities. The more important of the recommendations to counter this are that a measure of personal liability should attach to directors persistently involved in insolvent VAT registered businesses, that receivers and liquidators should be liable as individuals for offences committed by a body corporate under their control, and that it be put beyond doubt that persons in charge of and carrying on the business of an insolvent company are treated as taxable persons during their terms of office. The Government's proposals for the reform of insolvency law (Cmnd. 9175) may well provide an effective method of dealing with directors persistently involved in insolvent VAT registered businesses. It is intended, therefore, to review the need to implement recommendation 49(d) in the light of experience of the new insolvency regime.

16. That part of recommendation 50 which seeks in the first instance to improve compliance by wider use of collection visits would be resource intensive, might well

be counter-productive (eg the relatively compliant trader would be tempted to delay payment until a collection visit was made), and would be likely to achieve only part of the improvement in compliance offered by the surcharge system proposed as a possible longer term measure.

17. The compliance problem is sufficiently serious to justify the implementation of the surcharge system as soon as possible. The system would involve:

a. a warning to any trader who failed to submit by the required date two returns or payments in any period of two years;

b. an initial surcharge of 5% of the tax due, or £30 whichever is the greater, for the first default in the two years following the issue of the warning;

c. an increased surcharge, rising in 5% steps for subsequent defaults up to a maximum surcharge of 30% for the sixth default during the currency of the warning;

d. the warning, and thus the liability to surcharge, would lapse after a period of two years' satisfactory compliance.

18. As a concomitant of the surcharge, a repayment supplement would, subject to certain conditions, be paid to a trader whose claim for repayment had been unnecessarily delayed for more than two months. The supplement would be either £30 or 5% of the repayment made, whichever was the greater. Powers would be sought to suspend both the surcharge and the repayment supplement if the processing of returns is unavoidably interrupted. The repayment supplement would only be suspended, and subsequently reintroduced, by Treasury Order.

19. Under the present rules, Tribunal determinations are enforceable only by recourse to another court. It is accepted that, subject to a simple registration procedure, determinations of the Tribunal, whether of tax, interest, penalty or costs, which remain unpaid should rank as judgements of the High Court or Court of Session (R51). It is not intended to seek to implement the second part of this recommendation which would allow Customs and Excise to apply to the Tribunal for an order for payment for any

(unappealled) debt. The present well established recovery procedures are adequate for this purpose and afford the taxpayer the option of adjudication by the High Court.

20. Interested parties who commented on the proposals in this group unanimously accepted recommendations 45 and 47; one body was opposed to recommendations 2, and 51, and another to recommendation 49; the majority were generally in favour of the remaining proposals.

C. Assessments

21. Recommendations

8 Assessments to best judgement including "mark-up" assessments should continue unchanged.

9 Provision for "discovery" assessments and Tribunal power to increase assessments on appeal.

40 Revised procedure for out of time assessments.

41 Assessment of deceased VAT traders.

48 "Jeopardy assessment" procedure.

All these recommendations are acceptable to the Government.

22. Assessment by Customs of the VAT due (R8) is a tried and proven method of notifying errors, establishing a debt and adjusting Departmental accounts. It is also a convenient "decision" which may form the subject of appeal by the taxpayer. The Committee expressed general satisfaction with existing practice which it considered should continue unchanged.

23. Currently, once an assessment has been issued, it may not later be increased (unless new facts emerge), either by Customs or a Tribunal, even if errors are discovered. Implementation of recommendation 9 would enable both Customs and VAT

Tribunals to increase the amount of an assessment when it is discovered that the original amount is too low.

24. Under current legislation, assessments may be issued only for tax periods ending within the last six years unless it can be established before a Tribunal at an ex parte hearing that there is evidence of wilful default, neglect or fraud. Implementation of recommendation 40 would:

a. allow Customs to make assessments for periods earlier than six years previously without the need for ex parte leave from a Tribunal where fraud or serious misdeclaration (in place of wilful default and neglect) was involved;

b. allow taxpayers (for the first time) to appeal against the grounds for exceeding the normal six year limitation; and

c. introduce (for the first time) an overall twenty year limitation on such assessments.

25. The Committee discovered anomalies in the treatment of the VAT affairs of deceased taxpayers. There is currently no power to assess a personal representative of a deceased taxpayer for underdeclarations of VAT on prior trading, whereas there is for direct taxes. However, it is possible to assess for any prescribed accounting period by leave of the Tribunal at any time up to six years after death. This is a much more extensive power than exists on the direct tax side. Recommendation 41 proposes to correct this anomaly by introducing explicit provision for the assessment of personal representatives within three years of death, but limited to tax periods no more than six years before the date of assessment (or death in case of fraud or serious misdeclaration). Proceedings for leave to assess in such circumstances would be abolished.

26. If an assessment of VAT is unenforceable because of an appeal hearing delay, the trader concerned has the opportunity to dispose of his assets and thus jeopardise the prospect of the tax being recovered. This is a particular problem when criminal proceedings are instituted and appeals to the Tribunal may be held over for up to two years until the proceedings are concluded. Implementation of recommendation 48 would

enable the VAT Tribunal to direct immediate assessment and enforceability where there was reasonable cause to believe tax might be lost due to a default by any person.

27. Interested parties who commented on the proposals in this group were generally in favour of recommendations 8 and 48. A majority accepted recommendations 9 and 41. Reaction to recommendation 40 was mixed - the need for the time limit to be extended to twenty years in respect of serious misdeclaration was questioned by four bodies, and three considered that Customs should be required first to demonstrate at any appeal against an out of time assessment that there was a prima facie case of fraud or serious misdeclaration . The Committee, however, was careful to balance the proposed removal of the need for prior approval of the Tribunal with the introduction of new time limits, and it is likely that assessments going back as far as twenty years would only be raised in cases of suspected fraud and similar cases involving substantial sums of revenue.

D. Civil Investigation, Offences and Penalties

28. Recommendations

27 Abolition of criminal sanctions for regulatory offences.

28 Imposition of interest for defaults.

29 *Gross negligence (serious misdeclaration) provisions.

30 Civil fraud provisions.

31 Unauthorised issue of VAT invoices and failure to register to be treated as civil defaults.

(*As mentioned in the Chancellor's foreword and in paragraph 9, it has been decided to apply the description "serious misdeclaration" to the default referred to in this recommendation.)

33 Civil penalties and default interest - right of appeal.

34 Civil penalties for regulatory offences.

35 Assessment of civil penalties and interest - time limits, etc.

36 Power to mitigate interest and civil penalties.

38 Publication of names of offenders.

All these recommendations except R38 have been accepted, subject to the de minimis limit for R29 referred to in paragraph 33 below; to further consideration of R35(d) (see paragraph 38 below); and to wider powers of mitigation than proposed in R.36.

29. The Committee recommended the introduction of a civil offence code for VAT. This would:

a. decriminalise the regulatory offences, including failure to submit returns or pay tax, and offences such as failure to keep or produce records, and replace criminal prosecution with a scale of daily civil penalties (R27);

b. except as indicated below, provide (for the first time) for the payment of interest on all underdeclarations or overclaims of tax (R28);

c. create a new default of serious misdeclaration, defined by objective tests, and carrying a non-mitigable penalty of 30% of the tax underdeclared or overclaimed (R29); and

d. introduce a new concept of civil fraud as an alternative to, but not a replacement of, criminal prosecution, carrying a penalty of 100% of the tax underdeclared or overclaimed (R30), mitigable to 50% where the taxpayer co-operated in the investigation.

The proposed civil penalties would be imposed administratively, but would be subject to appeal.

30. The criminal sanctions for the regulatory offences at a. above would be replaced by fixed-sum daily penalties or, if greater, daily percentage penalties for failure to submit returns or pay tax. The daily penalties would increase in severity for repeated offences and be adjusted to take account of inflation (R34). The surcharge procedure (R50) would become the main sanction for failure to submit returns or pay tax, and the civil penalty would be limited to those cases where the surcharge proved to be ineffective.

31. Interested parties were in favour of the abolition of criminal sanctions but some had misgivings about the rigidity of the proposed civil penalties and pressed for wider powers of mitigation.

32. Interest would be applied to all assessments of understated or overclaimed VAT but not to assessments issued centrally because a return had not been made. The provision equates with sanctions applied by the Inland Revenue and would deny traders the interest-free use of money overdue to the Exchequer.

33. A serious misdeclaration penalty of 30% would be applied to assessments of underdeclared or overclaimed VAT of a size or frequency prescribed in objective tests. Included in this category would be the case where a trader accepted and paid an assessment issued because a return had not been submitted and that assessment significantly understated the true liability. Serious misdeclarations of VAT (unlike those for direct taxes) currently go unpenalised. The thresholds in the first and second tests proposed by the Keith Committee in paragraph 18.4.13 of its Report have been accepted, but the reckonable defaults for the third test would be limited to those which equalled or exceeded **5** % of the true amounts of tax due. The Keith Committee recognized that adjustments might need to be made to the tests and as indicated in paragraph 9 on page 7 of this paper, comments on them would be welcome.

34. A new offence of civil fraud would attract a penalty of 100% of the evaded tax mitigable down to 50%. In these cases the tax underdeclared or overclaimed would also be liable to interest. Cases would be investigated to the civil standard of proof based on probability. Three of the existing legal provisions for which there are sanctions under criminal law, those of the issue of VAT invoices by unauthorised persons, the failure to notify a liability to be registered for VAT and the failure by a person

exempted from registration to notify material changes in the nature of supplies would be civil offences attracting a penalty of 30% of the tax involved (R31). The more serious instances of these offences could also be considered under the civil fraud provisions where they had been committed with an intent to deceive.

35. The Committee recommended that:

a. civil penalties and interest should be assessable and recoverable in the same way as tax, with a right of appeal after the event and there should be time limits and other measures to tighten the assessment procedures (R33 & 35);

b. Customs should have a general power of mitigation but it should be used exceptionally (R36); and

c. the names of offenders should be published (R38).

36. Assessments of civil penalties and interest would operate in the same way as assessments for tax, without the need for prior proceedings before a VAT Tribunal but with a right of appeal after the event.

37. The time limits for assessing civil penalties for VAT would broadly follow those for direct taxes. Penalties would not be assessed later than six years after the offence occurred except for fraud and serious misdeclaration where it would be possible to assess at any time up to twenty years after the offence occurred. Assessments of the various civil penalties and interest could be made at any time within three years of the final determination of the amount of tax due. Assessments could also be made against the personal representative of a deceased trader who incurred the penalty. These rules would apply for the assessment of interest and civil penalties which would be recoverable as if they were ordinary assessments of tax. This should facilitate combined recovery in cases where tax, interest and penalties are assessed together. To prevent traders escaping payment of penalties and interest on underdeclarations and overclaims discovered on VAT control visits by declaring the amounts on their next VAT returns before the assessments are issued, penalties and interest would be applicable up to the date of payment.

38. The recommendation (R35(d)) that directors and officers of corporate bodies, in certain circumstances, should have a personal liability for civil offences committed by the corporate body raises wider issues of the extent of limited liability which the Government will wish to consider further before reaching a final conclusion.

39. One interested body was against all the proposals save for that making directors personally liable. For the rest, there was general acceptance, although some favoured a specific time limit for assessing all penalties with no extension for tax-geared penalties (R35(a)).

40. The Committee was not in favour of a wide power to mitigate interest and penalties except as proposed in recommendation 30. It recommended that whilst Customs should have a general power to mitigate interest and penalties, its application should be restricted to exceptional cases of financial hardship, injustice or difficult points of tax liability, and that regular reports should be made on its use (R36).

41. The importance which the Committee attached to the automaticity of its penalty and interest proposals is recognized, but it is considered on the grounds of equity that there should be wider discretion to mitigate penalties than that proposed. Information about the use made of the power to mitigate would be given in the Annual Reports of the Commissioners of Customs and Excise.

42. For both civil fraud and the compounding of proceedings for criminal charges, the Committee proposed that the names and details of those traders subject to these sanctions and those for whom the Tribunal upholds penalties for fraud, should be published but that there should be a discretion to withhold publication (R38) where there was a full spontaneous voluntary disclosure.

43. There was almost universal opposition by the representative bodies to the publication of defaulters' names. Publicity is likely to discourage acceptance of offers to compound proceedings and cause more alleged offenders to choose prosecution or to appeal to Tribunals in civil cases. This would increase Departmental costs and put more pressure on the Courts and Tribunals. The Government has accepted the majority view and has decided not to seek to implement this recommendation. Appeals to a Tribunal against assessments of civil fraud penalties would, of course, be reported in

the normal way. Publicity, in this instance, provides a safeguard against frivolous appeals.

E. Criminal Investigation, Offences and Penalties.

44. Recommendations

12 Code of questioning/tape recording in respect of persons in custody.

13 Tape recording out of custody.

14 Provision of signed statement/record of questioning for suspect on the premises (mainly covered by the Home Office Code of Practice).

15 Power of arrest.

16 The nomenclature of "detention" to be changed to "arrest".

17 Power to detain suspects in Scotland for questioning.

18 Level of judicial authority for issuing VAT search warrants.

19 Power to search under warrant to be limited to instances of suspected serious VAT fraud.

20 Production orders where premises to be searched are those of an unsuspected third party.

21 Particularity in warrants to be determined by the issuing authority.

22 Search of persons to be limited to those suspected of being in possession of evidence of VAT fraud.

23 Judicial authority's discretion to impose conditions on search warrants.

24 Provision of copy of search warrant for occupier of premises searched.

25 Presence of other persons at searches without judicial authorisation.

26 Safeguards in respect of seized documents.

32 VAT criminal offence code to be retained with amended provisions.

37 Power to compound to be retained.

39 Resiling from compounded settlement - time limit.

All these recommendations have been accepted except nos 13, 14 and 21, which need further consideration, and 18. The Keith Committee accepted that there was no evidence that VAT warrants were being sought or issued irresponsibly, and Government spokesmen have argued in the context of police search warrants during debates on the Police and Criminal Evidence Bill that magistrates are fully competent to deal with applications for such warrants. Raising authorisation to circuit judge level would increase the burden on the judiciary without materially strengthening the safeguards for the taxpayer.

45. Both the Royal Commission on Criminal Procedures (RCCP) and the Keith Committee looked at and made recommendations on the conduct of criminal investigations. The recommendations of both bodies generally aimed to improve the safeguards for the suspected person, prevent the abuse of power, and clarify the procedures to the benefit of both parties to the investigation.

46. The Government consulted widely on the report of the RCCP, and the Police and Criminal Evidence Act 1984 (PCEA) is its response. It is the Government's view that the practices and procedures of the police should, as far as is practical, apply to all criminal investigations. Many parts of the Act will, therefore, be applied (by Treasury Order) to Customs and Excise officers who will also, wherever appropriate, apply the codes of practice approved by Parliament for the investigation of offences.

47. A number of the Keith recommendations are subsumed wholly or partly in the PCEA. The provision of legal advice and tape recording in custody (R12), and the replacement of the word "detention" in Acts relating to Customs and Excise by the word "arrest" (R16) are covered by the PCEA and implementation will now follow automatically. Experience of the working of PCEA procedures is desirable before deciding whether to seek to implement the proposals relating to tape recording of interviews out of custody (R13), provision of copies of statements and records of questioning to suspects (R14) and further particularity in search warrants (R21).

48. A number of the recommendations in volumes 1 and 2, though written in the VAT context, are clearly not confined to VAT. Any changes will be delayed until consideration has been given to any similar recommendations which might be included in volume 4.

49. The proposed changes should go a long way towards redressing the balance between the powers of the Department, which a number of interested bodies considered excessive, and the rights and freedoms of the citizen. A production order procedure where the premises to be searched are those of an unsuspected third party (R20), the limiting of VAT search powers to serious frauds (R19), the restrictions on the search of persons (R22), judicial discretion to impose certain conditions on search warrants (R23), the provision of copy search warrants for occupiers (R24) and the tighter control over the seizure of documents (R26), would all be additional safeguards for the taxpayer. Disputes arising under grievance procedures would be dealt with by Magistrates' Courts (R26).

50. The appreciable rise in the number of professional criminals involved in large VAT frauds and the risk of their absconding justifies the introduction of a power of arrest for VAT offences (R15). The power would be restricted to serious frauds and arrest would only be authorised at a high level within the Department.

51. Of the other two recommendations in this group which have been accepted, the one approving the presence of necessary persons at searches (R25) simply maintains the status quo, while the other, that Customs and Excise officers in Scotland should be allowed to detain suspects for questioning (R17), would remove an anomaly between Customs powers and those of the Scottish police investigating similar offences.

52. Most of the recommendations were favourably received by interested parties though there was some opposition in respect of the arrest power.

53. The Keith Committee proposed the introduction of new civil sanctions aimed at civil fraud and serious misdeclaration, but it also recommended that the existing VAT criminal offence code should be retained with some modifications (R32). It proposed that there should be a redefinition of "fraudulent evasion" so that repayment frauds can be prosecuted under revenue law; that where the offence involves false declarations the penalty should be tax-geared; that there should be legislation to resolve the question of "deceiving" a computer; that section 39(3) Value Added Tax Act 1983, which provides for penalties where a person's conduct in a specified period must have involved the commission of an offence, should be used in cases involving smaller amounts of tax than is the present practice; that the maximum terms of imprisonment for VAT fraud offences should be seven years; and that the time limit within which prosecutions may take place should be increased from three to six years from the date of commission of the offence and, for cases on indictment, there should be no time limit. These proposals have been accepted.

54. The Committee also examined in detail the use of the power to compound criminal proceedings for VAT offences. After its examination it said, "the results seem to demonstrate a high standard of judgement of evidential sufficiency before compounded settlements are offered, and the clear cut nature of criminal investigation and compounding, with the lack of haggling involved, were attractive to a number of the accountants and lawyers who appeared before us". It recommended that the power to compound criminal proceedings in respect of VAT be retained (R37). Legislation is not involved.

55. Where an offer to compound proceedings is accepted, the Committee recommended that a person who has second thoughts should have a statutory right to resile from the agreement (R39). It recommended that the option should be brought to the attention of any person making a compounded settlement and that, on refund of the sums paid, he may lawfully be prosecuted. The Government has accepted this, but it is proposed that the time limit for exercising the option should be one month from the date of acceptance of the offer and not, as recommended by the Committee, one month from the date of making the settlement, which could, where time to pay was allowed, be

many months after the original offer. Implementation of this recommendation may have to be delayed pending consideration of volume 4 of the Keith Committee's Report.

56. The majority of the interested bodies who commented on these recommendations, as proposed by Keith, were in favour of acceptance.

F. Appeal Procedures and Professional Privilege

57. Recommendations

6 Information powers - legal professional privilege.

52 Status of VAT Tribunal members.

53 VAT Tribunal powers - assessment of penalties.

54 VAT Tribunal procedures.

55 Disputes arising from claims to legal professional privilege.

56 Guidelines and limitations for Courts dealing with claims to privilege.

57 General availability of claims to privilege.

58 Specific exclusions for claims to privilege.

59 Extension of professional privilege to tax agents.

(R51 concerns both appeal procedures and enforcement and is dealt with in Group B).

Except for those concerning privilege (to which further consideration is being given) the recommendations in this group have been accepted subject to some modifications.

58. On appeal procedures the Committee was favourably impressed with the operation of the VAT Tribunals and proposed that they should also be responsible for hearing appeals and applications with regard to the assessment of civil penalties and interest.

59. The "appeal" recommendations (R52-54) propose that the Tribunals and their members should have increased status (R52), commensurate with their proposed extended functions. It is also recommended that the Tribunals' present power to look at discretionary decisions (Value Added Tax Act 1983 section 40(6)), should be extended to the assessment of penalties (R53). The increase in status recommended for the President of the VAT Tribunals has already been effected following the Skyrme Report but the question of the status of other members of the Tribunals, which does not depend on legislation, will be considered by the Top Salaries Review Body as part of its comprehensive review of the judicial salary structure in 1985.

60. With few reservations, these proposals were acceptable to the bodies who submitted comments. The Council on Tribunals, however, did not consider the proposed contempt provisions appropriate to Tribunals (R54c) and it is proposed instead that VAT Tribunals should be empowered to impose a penalty not exceeding £1,000 for failure to comply with a decision or summons of the Tribunal. Provision has been made that, in certain cases, appeals should lie direct to the Court of Appeal, but no separate provision has been made for penalty determinations as it is considered that additional legislation is not required (R54(f)).

61. The recommendations on professional privilege (R6,R55-59) have implications for the whole concept of privilege. Further work needs to be done before firm decisions are taken, and the Revenue Departments are consulting the professional bodies concerned.

62. The Committee recommended that the VAT information powers should be subject to a general saving for legal privilege but that this protection should be limited to avoid concealment of facts necessary to assess tax liability (R6, R56 and R57); that statutory guidelines on the limits of privilege should be drawn up (R56); that disputes should be resolved by VAT Tribunals or other judicial authority, as appropriate (R55); that where privilege was to be excluded completely this should be expressly stated (R58); and that professional privilege in relation to tax advice should be extended to tax agents (R59).

63. The view of interested parties was that any changes should not be rushed and, given the sensitivity and far reaching nature of these recommendations, the Government has agreed that there should be a further period of consultation and consideration before firm decisions are made. However, implementation of recommendation 5 (see Group A), will remove the present limitations on the information which has to be provided in respect of supplies of services. The power being sought would override the defence of legal professional privilege and consequently the Commissioners of Customs and Excise undertake that, until the Government reaches a decision on the remaining privilege recommendations and any necessary legislation has been enacted, they will respect any reasonable claim to that privilege.

G. Inland Revenue and Customs and Excise Co-operation

64. Recommendations

42 Exchange of information between Customs and Excise and Inland Revenue to be extended nationwide (following the Leeds experiment).

43 Joint control visits/investigations by the Revenue Departments.

65. The Committee did not consider it practicable for the enforcement codes of the two Departments to be amalgamated or for a single agency to be responsible for all their enforcement activities. It did, however, recommend wider use of the power under section 127 of the Finance Act 1972 for the exchange of information (R42) and that pilot schemes be established to explore the feasibility of joint control visits to traders and joint local investigations (R43).

66. At present, the exchange of information is restricted, by Ministerial decision, to contacts between Head Offices and, on an experimental basis, between local offices in the Leeds area. The Government, supported by a majority of opinion among the representative bodies, accepts the recommendation that there should be a freer exchange of information. Experience in the Leeds area has demonstrated that the benefits, in revenue terms, would be considerably in excess of the cost and that, with suitable levels of authorisation, the principle of confidentiality can be maintained.

67. Simultaneous visits to a taxpayer by officers from both Departments could be difficult to arrange and there is a danger that they would find themselves in competition for the taxpayer's attention. Moreover, both Departments have very serious doubts as to the practicality of training a single officer to examine both VAT and direct taxes on the same visit. On balance it is considered that a pilot scheme based upon joint visits by an officer from each Department should be introduced to test their feasibility and cost-effectiveness.

68. Opinion among representative bodies for and against joint local investigations was fairly evenly divided and comments mirrored the practical problems foreseen by the two Departments. These arise from differences in training, background, experience and structure. However, the Departments will seek suitable opportunities to test the practicability of joint investigations. Legislation is not required.

LIST OF KEITH VAT RECOMMENDATIONS

No.	Recommendation	Government's proposal	Group
1	VAT registered traders should be required to retain VAT records for up to six years.	Accept	A
2	Best judgment requires that Customs and Excise should issue higher assessments whenever appropriate where there is a repeated failure to furnish a VAT return but previous assessments have been paid.	Accept	B
3	VAT control visiting should continue with improved powers and enhanced safeguards.	Accept	A
4	Amended provisions should in particular be made in respect of VAT control visiting regarding: a. checking the take of gaming machines b. place of production of records c. removal of documents d. production of documents by third parties.	Accept	A
5	The VAT information power in respect of supplies of services should be extended to cover both exempt supplies of services and information about the supply or services concerned, and thereby be assimilated to the power in respect of supplies of goods. Imported goods should also be brought within the scope of the power.	Accept	A
6	The VAT information powers in respect of supplies of goods and services should be subject to a general saving in favour of legal professional privilege (see	Consider further	F

No.	Recommendation	Government's proposal	Group
	Recommendation 57) with provision limiting the privilege where necessary in the interest of the ascertainment of facts relevant to VAT liability.		
7	Amended provision should be made in respect of access to and checking of computers, and admissibility in criminal proceedings of copy and computer produced documents.	Accept	A
8	Procedures for assessments "to best judgment" including "mark-up" assessments, should continue unchanged.	Accept	C
9	Provision should be made for a limited power to make "discovery" assessments in VAT, and the VAT Tribunal should be empowered to increase assessments on appeal.	Accept	C
10	Paragraph 4(6) of Schedule 7 to the VAT Act 1983 should be amended so that proof of removal abroad shall also be sufficient fulfilment of the requirement for the taxable person to account for goods he has received or imported.	Accept	A
11	Appropriate publicity should be given to the powers and safeguards applicable to VAT control visiting in the form of a leaflet setting out a "code of conduct".	Accept	A
12	The code of questioning applying to Customs and Excise, as respects the provision of legal advice to suspects in custody and any future arrangements for tape recording interviews in custody, should follow that applying to the police, as eventually enacted as a result of the Police and Criminal Evidence Bill.	Accept	E

No.	Recommendation	Government's proposal	Group
13	If settled arrangements for tape recording limited to interviews with suspects in custody are introduced under the applicable code of questioning, consideration should be given to applying them, with any necessary modifications, to questioning out of custody in criminal investigations by Customs and Excise.	Consider further	E
14	Whenever a suspect is invited to sign a written record of questioning or makes a statement, he should be entitled to a copy within a reasonable time.	Consider further	E
15	A power of arrest should be conferred on Customs and Excise officers in respect of serious offences of suspected VAT fraud.	Accept	E
16	The nomenclature of detention under the customs and excise Acts should be changed to that of arrest.	Accept	E
17	Customs and Excise officers should be empowered in Scotland to detain suspects for questioning in respect of arrestable offences in relation to Customs, Excise or VAT on the same terms as the police.	Accept	E
18	The judicial authority for issuing VAT search warrants should be raised to Circuit judge in England and Wales, and County court judge in Northern Ireland, and maintained at Sheriff in Scotland, with special arrangements made to cater for out of hours application.	Reject	E
19	The power to search under warrant for evidence of a VAT offence should be available only in respect of serious instances of suspected VAT fraud.	Accept	E

No.	Recommendation	Government's proposal	Group
20	Where the premises to be searched are those of an unsuspected third party Customs and Excise should have power to apply ex parte for, and the judicial authority the discretion to grant, an order for production or inspection of documents or other evidence.	Accept	E
21	There should be as much particularity in the warrant as to the offence suspected, the relevant area of tax obligations and the scope of the search, as the issuing authority considers practicable.	Consider further	E
22	The VAT power in the course of executing a search warrant to search persons should be limited, with appropriate safeguards, to persons reasonably suspected of being in possession of evidence of VAT fraud.	Accept	E
23	The judicial authority issuing the warrant should have discretion to impose such conditions as he considers necessary as safeguards for the citizen in the following respects: a. the maximum number of tax officials to be in the search party b. the hours within which execution of the search warrant is to commence c. the presence of police officers, when required to prevent a breach of the peace.	Accept	E
24	A copy of the warrant, endorsed with the name of the officer in charge of the search, should be provided for retention by the occupier of the premises searched.	Accept	E

No.	Recommendation	Government's proposal	Group
25	The tax official executing the warrant should be empowered to take with him necessary persons other than constables, without the need for judicial authorisation.	Accept	E
26	The safeguards in respect of documents seized should be enhanced and a grievance procedure established, whereby an aggrieved taxpayer may bring his dispute before the judicial authority who issued the warrant.	Accept	E
27	The criminal sanction for regulatory matters in VAT should be abolished and civil penalties be introduced for offences under s39(7) and (8) VAT Act 1983.	Accept	D
28	All understatements or overclaims of VAT liability should bear default interest along the lines of that provided by s88* TMA, to make commercial restitution.	Accept	D
29	A civil default of "gross negligence" should be introduced in VAT to be defined by objective tests, and attracting a non-mitigable penalty of 30 per cent of the VAT understated or overclaimed together with default interest.	Accept	D
30	A civil default of "civil fraud" should be introduced, defined as an act or omission intended to deceive Customs and Excise with the object of evading VAT, and attracting a penalty of 100 per cent of the evaded tax, mitigable to 50 per cent together with default interest.	Accept	D

(* Taxes Management Act 1970)

No.	Recommendation	Government's proposal	Group
31	The unauthorised issue of VAT invoices and failure to notify liability to be registered for VAT should cease to be criminal offences, and instead constitute the civil default of "gross negligence" attracting civil penalties at the non-mitigable rate of 30 per cent of the relevant amount of VAT, together with default interest.	Accept	D
32	The VAT criminal offence code should be retained but with:	Accept	E
	a. redefinition of "fraudulent evasion"		
	b. tax-gearing of certain penalties		
	c. provision to deal with "deceiving" a computer		
	d. extension of the use of s39(3) VAT Act 1983 to smaller cases		
	e. increases in the maximum penalties of imprisonment for VAT fraud to seven years		
	f. extended time limits for prosecution		
	g. increase in certain monetary penalties		
	h. alignment of penalties throughout the United Kingdom.		
33	Civil penalties and default interest should be assessable in the same way as tax, without the need for prior proceedings before the VAT Tribunal, but with a right of appeal, after the event, in respect of:	Accept	D

No.	Recommendation	Government's proposal	Group
	a. failure to keep records or produce documents		
	b. failure to furnish VAT returns or to pay tax		
	c. default interest		
	d. "gross negligence"		
	e. "civil fraud".		
34	There should be a new tariff for civil penalties under s39(7) and (8) VAT Act 1983, of daily rates only, with tax-geared alternatives where (8) applies, not mitigable, increasing in severity by reference to the frequency of similar offences by the same offender, and with provision for periodic uprating in the light of inflation.	Accept	D
35	In respect of the assessment of civil penalties and interest the following provisions should apply:	Accept except d. for further consideration	D
	a. the normal time limits for assessing penalties should be six years with extended time limits for tax-geared penalties		
	b. civil penalties and default interest should be assessable on the personal representatives of the deceased trader concerned		
	c. assessments of civil penalties and default interest should be recoverable as if assessments of tax		

No.	Recommendation	Government's proposal	Group
	d. S171(4) Customs and Excise Management Act 1979 should apply to liability to civil penalties as it now applies to liability to criminal penalties		
	e. special provision should be made where arrears of tax are declared belatedly.		
36	Customs and Excise should have a general power to mitigate interest and civil penalties, but the use of the power should be restricted to exceptional cases, and detailed regular reports made.	Accept with enhanced power by C&E to mitigate	D
37	The power to compound criminal proceedings in respect of VAT should be retained.	Accept	E
38	Customs and Excise should be required to publish the names and details of those making VAT settlements for civil fraud, VAT compounded settlements, and those against whom the VAT Tribunal upholds penalties for fraud, with discretion to withhold publication of the name where there has been full spontaneous voluntary disclosure.	Reject	D
39	There should be a statutory time limit within which a taxpayer may resile from a compounded settlement.	Accept	E
40	The requirement to obtain ex parte leave from the VAT Tribunal before making out of time assessments to recover tax lost by default should be abolished, in respect of both living and deceased taxpayers. Customs and Excise should be able to go back a maximum of twenty years in the case of gross negligence or fraud, and the requisite standard of proof should be balance of probabilities. A conviction in the	Accept	C

No.	Recommendation	Government's proposal	Group
	criminal courts should be conclusive evidence of fraud for these purposes.		
41	Revised provision should be made in respect of the assessment of deceased VAT traders.	Accept	C
42	The exchange of information between local offices of Customs and Excise and Inland Revenue, at present confined on an experimental basis to the Leeds area, should be extended nationwide.	Accept	G
43	Customs and Excise and Inland Revenue should establish a pilot scheme to explore the feasibility of: a. joint control visits for all VAT and direct tax purposes, and b. joint local investigations.	Consider further	G
44	Where a foreign revenue authority requests information, Customs and Excise should be required to notify the taxpayer of the request and he should have the opportunity to object to disclosure on the grounds that the information is commercially secret, with any dispute being adjudicated by the VAT Tribunal. The requirement to notify the taxpayer should not run in the case of requests for information where fraud is reasonably suspected.	Consider further	A

No.	Recommendation	Government's proposal	Group
45	The Scottish Law Commission proposal for a uniform code, incorporating an explicit grievance procedure, to regulate the recovery of taxes in Scotland by summary warrant diligence should be implemented.	*Accept	B
46	The Scottish Law Commission proposal that summary warrants for the recovery of taxes be enforceable by arrestment as well as poinding should be implemented; and its extension to the rest of the United Kingdom should be considered further in the light of Scottish experience.	*Accept	B
47	Forcible entry to allow a levy should be made only on a warrant issued by a magistrate or Sheriff: and there should be explicit provision to penalise interference with goods subject to a walking possession agreement.	Accept	B
48	A "jeopardy assessment" procedure should be introduced to enable the VAT Tribunal, on application by Customs and Excise, to direct that an assessment be immediately enforceable in circumstances where there is reasonable cause to believe that VAT might be lost due to the default of any person.	Accept	C
49	To counter "phoenix syndrome" cases the following measures should be implemented:	Accept except d. for further consideration	B
	a. Customs and Excise should take early and vigorous enforcement action in such cases		

(*This should be subsumed in a (Scottish) Diligence Bill)

No.	Recommendation	Government's proposal	Group
	b. there should be a wider provision for appeals by VAT traders against security demands		
	c. Customs and Excise should accept a wider range of forms of security		
	d. a measure of personal liability for company VAT debts should attach to directors persistently involved in insolvent VAT registered businesses		
	e. VAT law about receivers and liquidators should be clarified.		
50	Customs and Excise should take further steps in the short term to enhance their VAT enforcement regime, including considering wider use of early collection visits and the assessment of civil penalties (see Recommendation 33); and in the longer term, if significant non-compliance persists, provision should be made for a system of automatic surcharges on unpaid VAT liabilities.	Accept but move direct to the surcharge	B
51	A determination by the VAT Tribunal of tax, interest or penalty should be enforceable as if a judgment of the High Court or Court of Session; such enforceability should extend to orders for payment granted on Departmental application subject to prior notification to the taxpayer and the right for him to appear before the Tribunal to object to the application.	Accept except for enforceability of orders for payment	B
52	Revised arrangements should be made in respect of the status of VAT Tribunal members.	Accept	F
53	The extended powers conferred on the VAT Tribunal	Accept	F

No.	Recommendation	Government's proposal	Group
	by s40(6) VAT Act 1983, following the Corbitt case, are appropriate, and should apply to assessments of penalties as they apply to assessments of tax. The precise scope of s40(6) should be kept under review.		
54	New or amended VAT Tribunal procedures should be adopted in the following areas: a. provision for discovery of documents b. provision for prior production of documents in third party hands c. enhanced sanctions for failure to comply with orders d. provision for settling appeals by agreement e. public hearings of appeals against assessments of penalties f. appeals beyond the Tribunal i. generally, and ii. as regards penalty determinations.	Accept with a modification affecting c.	F
55	Disputes arising from claims to legal professional privilege, a. in relation to the exercise of VAT information production powers or in connection with appeal proceedings, should be determined by the VAT Tribunal;	Consider further	F

No.	Recommendation	Government's proposal	Group
	b. advanced in the course of any search of premises under VAT warrant, should be determined by the judicial authority who issued the warrant.		
56	Statutory guidelines should be drawn up for courts and the VAT Tribunal dealing with claims to privilege, in particular limiting the privilege where necessary in the interest of the ascertainment of facts relevant to VAT liability.	Consider further	F
57	Claims to privilege should be generally available (subject to the limitations at Recommendations 6 and 56) and there should be a general enactment to this effect.	Consider further	F
58	Where in relation to any specific coercive power, it is desired to exclude the application of privilege completely, this should be specifically enacted.	Consider further	F
59	Professional privilege in relation to tax advice given should be extended to duly appointed tax agents who have been admitted members of an incorporated society of accountants or of the Institute of Taxation.	Consider further	F

DRAFT CLAUSES AND SCHEDULES

CLAUSES

Miscellaneous

SCHEDULES

Offences etc.

Offences and penalties in criminal proceedings.

1.-(1) Section 39 of the principal Act (offences and penalties) shall be amended in accordance with the following provisions of this section; but any increased penalty provided for by those provisions does not apply to an offence committed on or before the date this Act is passed.

(2) In subsections (1)(b), (2)(ii) and (3)(b) (maximum of 2 years imprisonment on indictment) for "2" there shall be substituted "7".

(3) After subsection (1) there shall be inserted the following subsection:-

"(1A) Any reference in subsection (1) above or subsection (3) below to the evasion of tax includes a reference to the obtaining of -

(a) a payment under section 14(5) above; or

(b) a refund under section 21 or section 22 above; or

(c) a repayment under section 23 above;

and any reference in those subsections to the amount of the tax shall be construed, -

(i) in relation to tax itself or a payment falling within paragraph (a) above, as a reference to the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated; and

(ii) in relation to a refund or repayment falling within paragraph (b) or paragraph (c) above, as a reference to the amount falsely claimed by way of refund or repayment."

(4) In subsection (2)(i) (penalty on summary conviction for certain offences relating to false documents or false information) after the words "statutory maximum" there shall be inserted the words "or, where subsection (2A) or subsection (2B) below applies, to the alternative penalty specified in that subsection if it is greater".

(5) After subsection (2) there shall be inserted the following subsections:-

"(2A) In any case where -

(a) the document referred to in subsection (2)(a) above is a return required under this Act, or

(b) the information referred to in subsection (2)(b) above is contained in or otherwise relevant to such a return,

the alternative penalty referred to in subsection (2)(i) above is a penalty equal to three times the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated.

(2B) In any case where -

(a) the document referred to in subsection (2)(a) above is a claim for a refund under section 21 or section 22 above or

for a repayment under section 23 above, or

(b) the information referred to in subsection (2)(b) above is contained in or otherwise relevant to such a claim,

the alternative penalty referred to in subsection (2)(i) above is a penalty equal to three times the amount falsely claimed.

(2C) The reference in subsection (2)(a) above to furnishing, sending or otherwise making use of a document which is false in a material particular, with intent to deceive, includes a reference to furnishing, sending or otherwise making use of such a document, with intent to secure that a machine will respond to the document as if it were a true document.

(2D) Any reference in subsection (2)(a) or subsection (2C) above to producing, furnishing or sending a document includes a reference to causing a document to be produced, furnished or sent."

(6) After subsection (3) there shall be inserted the following subsection:-

"(3A) Where an authorised person has reasonable grounds for suspecting that an offence has been committed under the preceding provisions of this section, he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence."

(7) The following provisions shall cease to have effect:-

(a) in subsection (5), paragraph (a) and the words from "or, if greater" onwards;

(b) subsection (6); and

(c) subsection (7).

(8) In subsection (8) -

(a) for the words "the failure referred to in subsection (7) above" there shall be substituted the words "a person's failure to comply with any regulations made under this Act"; and

(b) for the words from "that subsection" to "(if it is greater)" there shall be substituted the words "that person shall be liable on summary conviction to a penalty of level 3 on the standard scale, together with a penalty of whichever is the greater of £10 and";

but that subsection, as so amended, shall not apply to a failure which begins on or after such day as the Treasury may by order made by statutory instrument appoint.

(9) In accordance with the provisions of subsections (1) to (7) above, section 39 of the principal Act, excluding subsection (8), shall have effect as set out in Schedule 1 to this Act.

Civil penalties

Tax evasion: conduct involving dishonesty.

2.-(1) In any case where, -

(a) for the purpose of evading tax, a person does any act or omits to take any action, and

(b) his conduct involves an element of dishonesty (whether or not it is such as to give rise to criminal liability),

he shall be liable, subject to subsections (4) and (5) below, to a penalty equal to the amount of tax evaded or, as the case may be, sought to be evaded, by his conduct.

(2) The reference in subsection (1)(a) above to evading tax includes a reference to obtaining any of the following sums, -

(a) a payment under section 14(5) of the principal Act,

(b) a refund under section 21 or section 22 of that Act, and

(c) a repayment under section 23 of that Act,

in circumstances where the person concerned is not entitled to that sum.

(3) The reference in subsection (1) above to the amount of the tax evaded or sought to be evaded by a person's conduct shall be construed, -

(a) in relation to tax itself or a payment under section 14(5) of the principal Act, as a reference to the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated; and

(b) in relation to the sums referred to in paragraphs (b) and (c) of subsection (2) above, as a reference to the amount falsely claimed by way of refund or repayment.

(4) If a person liable to a penalty under this section has co-operated with the Commissioners in the investigation of his true liability for tax or, as the case may be, of his true entitlement to any payment, refund or repayment, the Commissioners or, on appeal, a value added tax tribunal may reduce the penalty to an amount which is not less than half what it would have been apart from this subsection; and in determining the extent of any reduction under this subsection, the Commissioners or tribunal shall have regard to the extent of the co-operation which the person concerned has given to the Commissioners in their investigation.

(5) Where, by reason of conduct falling within subsection (1) above, a person is convicted of an offence (whether under the principal Act or otherwise), that conduct shall not also give rise to liability to a penalty under this section.

Understatements and overclaims.

3 .-(1) In any case where, for a prescribed accounting period beginning after the day appointed under subsection (7) below, -

(a) a return is made which understates a person's liability to tax, or

(b) an assessment is made which understates a person's liability to tax and he takes no steps to draw the understatement to the attention of the Commissioners, or

(c) a payment is made to a person under section 14(5) of the principal Act of a sum to which he is not entitled,

and the circumstances are as set out in paragraph (a) or paragraph (b) of subsection (2) below, the person concerned shall be liable, subject to subsection (6) below, to a penalty equal to 30 per cent. of the tax which would have been lost if the understatement or incorrect payment had not been discovered.

(2) The circumstances referred to in subsection (1) above are as follows:-

(a) that the tax for the period concerned which would have been lost if the understatement or incorrect payment had not been discovered -

(i) equals or exceeds 10 per cent. of the true amount of tax for that period, or

(ii) equals or exceeds whichever is the greater of £1,000 and ½ per cent. of the true amount of tax for that period; or

(b) that the condition in subsection (3) below is fulfilled with respect to the period concerned and that, during any period of four years beginning not more than six years before the end of that period, there were at least two earlier prescribed accounting periods in respect of each of which -

(i) either there was made such a return or payment as is referred to in paragraph (a) or paragraph (c) of subsection (1) above or there was such an assessment as is referred to in paragraph (b) of that subsection and the person concerned took no steps to draw the understatement to the attention of the Commissioners; and

(ii) the condition in subsection (3) below was fulfilled.

(3) The condition referred to in subsection (2)(b) above is that the tax for the period concerned which would have been lost if the understatement or incorrect payment had not been discovered equals or exceeds 5 per cent. of the true amount of tax for that period.

(4) The references in subsections (1) to (3) above to the tax for a prescribed accounting period which would have been lost if an understatement or incorrect payment had not been discovered is a reference to the aggregate of -

(a) the amount (if any) by which credit for input tax for that period was overstated; and

(b) the amount (if any) by which output tax for that period was understated.

(5) In subsections (2)(a) and (3) above "the true amount of tax", in relation to a prescribed accounting period, means the amount of tax which was due from the person concerned for that period or, as the case may be, the amount of the payment (if any) to which he was entitled under section 14(5) of the principal Act for that period.

(6) Where, by reason of conduct falling within subsection (1) above, -

(a) a person is convicted of an offence (whether under the principal Act or otherwise), or

(b) a person is assessed to a penalty under section 2 above,

that conduct shall not also give rise to liability to a penalty under this section and shall not be taken into account under subsection (2)(b) above.

(7) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint.

Failures to notify and unauthorised issue of invoices.

4.-(1) In any case where -

(a) a person fails to comply with any of paragraphs 3, 4 and 11(2) of Schedule 1 to the principal Act (duty to notify liability for registration or change in nature of supplies etc. by a person exempted from registration), or

(b) an unauthorised person issues an invoice showing an amount as being tax or as including an amount attributable to tax,

he shall be liable, subject to subsections (4) and (5) below, to a penalty equal to 30 per cent. of the relevant tax or, if it is greater or the circumstances are such that there is no relevant tax, to a penalty of £50.

(2) In subsection (1)(b) above, "an unauthorised person" means anyone other than -

(a) a person registered under the principal Act; or

(b) a body corporate treated for the purposes of section 29 of that Act as a member of a group; or

(c) a person treated as a taxable person under regulations made under section 31(4) of that Act; or

(d) a person authorised to issue an invoice under regulations made under paragraph 2(6) of Schedule 7 to that Act; or

(e) a person acting on behalf of the Crown.

(3) In subsection (1) above "relevant tax" means, -

(a) in relation to a person's failure to comply with paragraph 3 or paragraph 4 of Schedule 1 to the principal Act, the tax (if any) for which he is liable for the period beginning on the date with effect from which he is, in accordance with that paragraph, required to be registered and ending on the date on which the Commissioners received notification of, or otherwise discovered, his liability to be registered; and

(b) in relation to a person's failure to comply with sub-paragraph (2) of paragraph 11 of Schedule 1 to the principal Act, the tax (if any) for which, but for any exemption from registration, he would be liable for the period beginning on the date of the change or alteration referred to in that sub-paragraph and ending on the date on which the Commissioners received notification of, or otherwise discovered, that change or alteration; and

(c) in relation to the issue of such an invoice as is referred to in subsection (1)(b) above, the amount which is shown on the invoice as tax or which is to be taken as representing tax.

(4) Where, by reason of conduct falling within subsection (1) above, -

(a) a person is convicted of an offence (whether under the principal Act or otherwise), or

(b) a person is assessed to a penalty under section 2 above,

that conduct shall not also give rise to liability to a penalty under this section.

(5) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order substitute for the sum for the time being specified in subsection (1) above such other sum as appears to them to be justified by the change.

(6) An order under subsection (5) above shall not apply in relation to a failure to comply which began before the date on which the order comes into force.

Breaches of walking possession agreements.

5.-(1) This section applies where -

(a) in accordance with regulations under paragraph 6(4) of Schedule 7 to the principal Act, a distress is authorised to be levied on the goods and chattels of a person (in this section referred to as a "person in default") who has refused or neglected to pay any tax due or any amount recoverable as if it were tax due; and

(b) the person levying the distress and the person in default have entered into a walking possession agreement, as defined in subsection (2) below.

(2) In this section a "walking possession agreement" means an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default -

(a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and

(b) undertakes not to remove or allow the removal of any of the specified property from the premises named in the agreement.

(3) If the person in default is in breach of the undertaking contained in the walking possession agreement, he shall be liable to a penalty equal to half of the tax or other amount referred to in subsection (1)(a) above.

(4) This section does not extend to Scotland.

Breaches of regulatory provisions.

6.-(1) If any person fails to comply with a requirement imposed under -

(a) paragraph 7 of Schedule 1 to the principal Act (notification of cessation of taxable supplies), or

(b) paragraph 7(1) or paragraph 8 of Schedule 7 to that Act (records and information etc.), or

(c) any regulations or rules made under that Act, other than rules made under paragraph 9 of Schedule 8, thereto (procedural rules for tribunals),

he shall be liable, subject to subsections (8) and (9) below, to a daily penalty at the prescribed rate for each day on which the failure continues.

(2) If any person fails to comply with a requirement to preserve records imposed under paragraph 7(2) of Schedule 7 to the principal Act, he shall be liable, subject to the following provisions of this section, to a penalty of £500.

(3) Subject to subsection (4) below, in relation to a failure to comply with any such requirement as is referred to in subsection (1) above, the prescribed rate shall be determined by reference to the number of occasions in the period of two years preceding the beginning of the failure in question on which the person concerned has previously failed to comply with that requirement and, subject to the following provisions of this section, the prescribed rate shall be, -

(a) if there has been no such previous occasion in that period, £10;

(b) if there has been only one such occasion in that period, £20; and

(c) in any other case, £30.

(4) For the purposes of subsection (3) above -

(a) a failure to comply with any such requirement as is referred to in subsection (1) above shall be disregarded if, as a result of the failure, the person concerned became liable for a surcharge under section 8 below;

(b) a continuing failure to comply with any such requirement shall be regarded as one occasion of failure occurring on the date on which the failure began;

(c) if the same omission gives rise to a failure to comply with more than one such requirement, it shall nevertheless be regarded as the occasion of only one failure; and

(d) in relation to a failure to comply with a requirement imposed by regulations as to the furnishing of a return or as to the payment of tax, a previous failure to comply with such a requirement as to either of those matters shall be regarded as a previous failure to comply with the requirement in question.

(5) Where the failure referred to in subsection (1) above consists -

(a) in not paying the tax due in respect of any period within the time required by regulations under section 14(1) of the principal Act, or

(b) in not furnishing a return in respect of any period within the time required by regulations under paragraph 2(1) of Schedule 7 to that Act,

the prescribed rate shall be whichever is the greater of that which is appropriate under paragraphs (a) to (c) of subsection (3) above and an amount equal to one-sixth, one-third or one half of 1 per cent. of the tax due in respect of that period, the appropriate fraction being determined according to whether paragraph (a), paragraph (b) or paragraph (c) of subsection (3) above is applicable.

(6) For the purposes of subsection (5) above, the tax due, -

(a) if the person concerned has furnished a return, shall be taken to be the tax shown in the return as that for which he is accountable in respect of the period in question, and

(b) in any other case, shall be taken to be such tax as has been assessed for that period and notified to him under paragraph 4(1) of Schedule 7 to the principal Act.

(7) If it appears to the Treasury that there has been a change in the value of money since the passing of this Act or, as the case may be, the last occasion when the power conferred by this subsection was exercised, they may by order substitute for the sums for the time being specified in subsection (2) and paragraphs (a) to (c) of subsection (3) above such other sums as appear to them to be justified by the change; but an order under this subsection shall not apply to a failure which began before the date on which the order comes into force.

(8) Where, by reason of conduct falling within subsection (1) or subsection (2) above, -

(a) a person is convicted of an offence (whether under the principal Act or otherwise), or

(b) a person is assessed to a penalty under section 2 or section 3 above, or

(c) a person is assessed to a surcharge under section 8 below,

that conduct shall not also give rise to liability to a penalty under this section.

(9) Nothing in the preceding provisions of this section applies to a failure to comply with any requirement if the failure begins before the day appointed under section 1(7) above.

Interest, surcharges and supplements

Interest on tax etc.

7.-(1) Subject to section 10(6) below, where an assessment is made under any provision of paragraph 4 of Schedule 7 to the principal Act and, in the case of an assessment under sub-paragraph (1) of that paragraph, at least one of the following conditions is fulfilled, namely, -

(a) the assessment relates to a prescribed accounting period in respect of which either -

(i) a return has previously been made, or

(ii) an earlier assessment has already been notified to the person concerned,

(b) the assessment relates to a prescribed accounting period which exceeds three months and begins on the date with effect from which the person concerned was, or was required to be, registered,

(c) the assessment relates to a prescribed accounting period at the beginning of which the person concerned was, but should no longer have been, exempted from registration under paragraph 11(1)(a) of Schedule 1 to the principal Act,

the tax or other amount assessed shall carry interest, in accordance with subsection (4) or subsection (5) below, at the prescribed rate until payment.

(2) In any case where -

(a) a person fails to comply with paragraph 3 or paragraph 4 of Schedule 1 to the principal Act (notification of liability to registration) or, being a person exempted from registration under sub-paragraph (1)(a) of paragraph 11 of that Schedule, fails to comply with sub-paragraph (2) of that paragraph (notice of circumstances affecting entitlement to exemption), and

(b) the Commissioners, rather than assessing the amount of tax due, require him to make a return for the period beginning on the date with effect from which he was required to be registered or, as the case may be, on which it appears to the Commissioners that he should no longer have been exempt from registration and ending on a date specified by the Commissioners, and

(c) that period exceeds three months, and

(d) the tax due for that period is paid without the need for an assessment,

that tax shall carry interest, in accordance with subsection (4) or subsection (5) below, at the prescribed rate until payment.

(3) If, in a case where subsection (2) above does not apply, -

(a) the circumstances are such that an assessment falling within subsection (1) above could have been made, but

(b) before such an assessment was made the tax due or other amount concerned was paid (so that no such assessment was necessary),

that tax or other amount shall carry interest, in accordance with subsection (4) or subsection (5) below, at the prescribed rate until the date on which it was paid.

(4) Where the amount assessed or paid as mentioned in any of subsections (1) to (3) above relates to a particular prescribed accounting period which does not exceed three months, interest under this section shall run on the whole of that amount from the reckonable date.

(5) Where subsection (4) above does not apply, the Commissioners shall, to the best of their judgment, attribute different parts of the amount assessed or paid to different parts of the period to which that amount relates; and interest under this section on the part of an amount which is attributed to a particular part of a period shall run from the date which, if that part were a prescribed accounting period, would be the reckonable date.

(6) Where an unauthorised person, as defined in section 4(2) above, issues an invoice showing an amount as being tax or as including an amount attributable to tax, the amount which is shown as tax or, as the case may be, is to be taken as representing tax shall carry interest at the prescribed rate from the date of the invoice until payment.

(7) The references in subsections (4) and (5) above to the reckonable date shall be construed as follows:-

(a) where the amount assessed or paid is such an amount as is referred to in sub-paragraph (2)(a) or sub-paragraph (2)(b) of paragraph 4 of Schedule 7 to the principal Act (incorrect repayment of tax or payment in respect of excess credit), the reckonable date is the seventh day after the day on which the order was issued for the payment of the amount which ought not to have been repaid or paid to the person concerned; and

(b) in all other cases the reckonable date is the latest date on which (in accordance with regulations under the principal Act), a return is required to be made for the prescribed accounting period to which the amount assessed or paid relates; and

(c) in the case of an amount assessed under paragraph 4(6) of Schedule 7 to the principal Act (assessments in respect of goods which cannot be accounted for) the sum assessed shall be taken for the purposes of paragraph (b) above to relate to the period for which the assessment was made;

and interest under this section shall run from the reckonable date even if that date is a non-business day, within the meaning
1882 c.61. of section 92 of the Bills of Exchange Act 1882.

(8) In this section "the prescribed rate" means such rate as may be prescribed by order made by the Treasury; and such an order -

(a) may prescribe different rates for different purposes;

(b) shall apply to interest for periods beginning on or after the date when the order is expressed to come into force, whether or not interest runs from before that date; and

(c) shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.

(9) Interest under this section shall be paid without any deduction of income tax.

(10) This section shall come into force on such day as the Treasury may by order appoint.

The default surcharge.

8.-(1) If, by the last day on which a taxable person is required in accordance with regulations under the principal Act to furnish a return for a prescribed accounting period, being a day falling on or after the day appointed under subsection (7) below, -

(a) the Commissioners have not received that return, or

(b) the Commissioners have received that return but have not received the amount of tax shown on the return as payable by him in respect of that period,

then that person shall be regarded for the purposes of this section as being in default in respect of that period.

(2) Subject to subsections (8) and (9) below, subsection (4) below applies in any case where -

(a) a taxable person is in default in respect of any two prescribed accounting periods; and

(b) the last day of the later one of those periods falls on or before the second anniversary of the last day of the earlier one; and

(c) the Commissioners serve notice on the taxable person (in this section referred to as a "surcharge liability notice") specifying as a surcharge period for the purposes of this section a period ending on the second anniversary of the last day of the later period referred to in paragraph (b) above and beginning, subject to subsection (3) below, on the date of the notice.

(3) If, apart from this subsection, the surcharge period to be specified in a surcharge liability notice would begin during the currency of an existing surcharge period already notified to the taxable person concerned, the surcharge period specified in that notice shall be expressed as a continuation of the existing surcharge period and, accordingly, for the purposes of this section, that existing period and its extension shall be regarded as a single surcharge period.

(4) Subject to subsections (8) and (9) below, if a taxable person on whom a surcharge liability notice has been served is in default in respect of a prescribed accounting period ending within the surcharge period specified in (or extended by) that notice, he shall be liable to a surcharge equal to whichever is the greater of -

(a) the specified percentage of his outstanding tax for that period; and

(b) £30;

and the reference in paragraph (a) above to a person's outstanding tax for a prescribed accounting period is a reference to so much of the tax for which he is liable in respect of that period as has not been paid by the last day on which he is required (as mentioned in subsection (1) above) to make a return for that period.

(5) Subject to subsections (8) and (9) below, the specified percentage referred to in subsection (4)(a) above shall be determined in relation to a prescribed accounting period by reference to the number of such periods in respect of which the taxable person is in default during the surcharge period, so that, -

(a) in relation to the first such prescribed acounting period, the specified percentage is 5 per cent.;

(b) in relation to the second such period, the specified percentage is 10 per cent.; and

(c) in relation to each subsequent such period the specified percentage is increased by a further 5 per cent. up to a maximum of 30 per cent. for the sixth and any later period.

(6) If, at any time during a period which is a surcharge period notified to a taxable person, another person becomes liable to make a return as his personal representative, trustee in bankruptcy, receiver, liquidator or in any other representative capacity in relation to him, the preceding provisions of this section shall have effect -

(a) as if any surcharge liability notice served on the taxable person had been served on that other person in his representative capacity; and

(b) subject to paragraph (a) above, as if any reference to the taxable person included a reference to that other person acting in that capacity.

(7) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint.

(8) In any case where -

(a) the conduct by virtue of which a person is in default in respect of a prescribed accounting period is also conduct falling within subsection (1) of section 6 above, and

(b) by reason of that conduct, the person concerned is assessed to a penalty under that section,

the default shall be left out of account for the purposes of subsections (2) to (6) above.

(9) If the Commissioners, after consultation with the Treasury, so direct, a default in respect of a prescribed accounting period specified in the direction shall be left out of account for the purposes of subsections (2) to (6) above.

Repayment supplement in respect of certain delayed payments.

9.-(1) In any case where -

(a) a person is entitled to a payment under section 14(5) of the principal Act in respect of a prescribed accounting period, and

(b) the return for that period which is required in accordance with regulations under the principal Act is received by the Commissioners not later than one month after the last day on which, in accordance with those regulations, it is required to be furnished, and

(c) the order for the payment of the amount due under the said section 14(5) is not issued by the Commissioners within the period of sixty days beginning on the day following the end of that prescribed accounting period or, if it is later, on the date of the receipt by the Commissioners of the return referred to in paragraph (b) above, and

(d) the amount shown on that return as due by way of payment under the said section 14(5) is not more than £10 in excess of the payment which was in fact due,

the amount which, apart from this section, would be due by way of that payment shall be increased by the addition of a supplement equal to 5 per cent. of that amount or £30, whichever is the greater.

(2) Regulations may provide that, in computing the period of sixty days referred to in subsection (1)(c) above, there shall be left out of account periods determined in accordance with the regulations and referable to -

(a) the raising and answering of any reasonable inquiry relating to the return referred to in subsection (1)(b) above,

(b) the correction by the Commissioners of any errors or omissions in that return,

(c) any such continuing failure to submit returns or pay tax as is referred to in section 14(7) of the principal Act, and

(d) compliance with any such condition as is referred to in paragraph 5(1) of Schedule 7 to that Act (production of documents or giving of security as a condition of payment).

(3) Except for the purpose of determining the amount of the supplement, a supplement paid to any person under subsection (1) above shall be treated as an amount due to him by way of credit under section 14(5) of the principal Act.

(4) This section shall come into operation on such day as the Treasury may by order made by statutory instrument appoint.

(5) If the Treasury by order so direct, any period specified in the order shall be disregarded for the purpose of calculating the period of sixty days referred to in subsection (1)(c) above.

(6) Section 45(2) of the principal Act (statutory instruments subject to negative resolution) does not apply to an order under subsection (5) above.

Assessment of amounts due by way of penalty, interest or surcharge.

10.-(1) Where any person is liable -

(a) to a penalty under any of sections 2 to 6 above, or

(b) for interest under section 7 above, or

(c) to a surcharge under section 8 above,

the Commissioners may assess the amount due by way of penalty, interest or surcharge, as the case may be, and notify it to him accordingly; and the fact that any conduct giving rise to a penalty under any of sections 2 to 6 above may have ceased before an assessment is made under this section shall not affect the power of the Commissioners to make such an assessment.

(2) In the case of the penalties, interest and surcharge referred to in the following paragraphs, the assessment under this section shall be of an amount due in respect of the prescribed accounting period which in the paragraph concerned is referred to as "the relevant period", -

(a) in the case of a penalty under section 2 above relating to the evasion of tax, the relevant period is the prescribed accounting period for whch the tax evaded was due;

(b) in the case of a penalty under section 2 above relating to the obtaining of a payment under section 14(5) of the principal Act, the relevant period is the prescribed accounting period in respect of which the payment was obtained;

(c) in the case of a penalty under section 3 above,

the relevant period is the prescribed accounting period for which liability to tax was understated or, as the case may be, in respect of which the payment referred to in subsection (1)(c) of that section was made;

(d) in the case of interest under section 7 above, the relevant period is the prescribed accounting period in respect of which the tax (or amount assessed as tax) was due; and

(e) in the case of a surcharge under section 8 above the relevant period is the prescribed accounting period in respect of which the taxable person is in default and in respect of which the surcharge arises.

(3) In any case where the amount of any penalty, interest or surcharge falls to be calculated by reference to tax which was not paid at the time it should have been and that tax (or the supply which gives rise to it) cannot be readily attributed to any one or more prescribed accounting periods, it shall be treated for the purposes of the principal Act and this Part of this Act as tax due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the tax and penalty, interest or surcharge.

(4) Where a person is assessed under this section to an amount due by way of any penalty, interest or surcharge falling within subsection (2) above and is also assessed under sub-paragraph (1), sub-paragraph (2) or sub-paragraph (6) of paragraph 4 of Schedule 7 to the principal Act for the prescribed accounting period which is the relevant period under subsection (2) above,

the assessments may be combined and notified to him as one assessment, but the amount of the penalty, interest or surcharge shall be separately identified in the notice.

(5) In the case of an amount due by way of penalty under section 6 or interest under section 7 above -

(a) a notice of assessment under this section shall specify a date, being not later than the date of the notice, to which the aggregate amount of the penalty or, as the case may be, the amount of interest which is assessed is calculated; and

(b) if the penalty or interest continues to accrue after that date, a further assessment or assessments may be made under this section in respect of amounts which so accrue.

(6) If, within such period as may be notified by the Commissioners to the person liable to a penalty under section 6 above or for interest under section 7 above, -

(a) a failure falling within section 6(1) above is remedied, or

(b) the tax or other amount referred to in section 7(1) above is paid,

it shall be treated for the purposes of section 6 or, as the case may be, section 7 above as remedied or paid on the date specified as mentioned in subsection (5)(a) above.

(7) Sub-paragraphs (9) and (10) of paragraph 4 of Schedule 7 to the principal Act (effect of assessment and notification and provisions as to personal representative, trustee in bankruptcy etc.) apply where a sum is assessed under this section as they apply where a sum is assessed under any provision of that paragraph.

Assessments to counter possible loss of tax.

11.-(1) The provisions of subsection (3) or subsection (4) below or, as the case may be, of both those subsections have effect in any particular case if, and only if, on an application made by the Commissioners, a value added tax tribunal so orders.

(2) A tribunal shall not make an order under this section unless it is satisfied that the Commissioners have reasonable grounds for believing that tax may be lost by reason of an actual or anticipated default by any person.

(3) Before the latest date on which the person concerned is required in accordance with regulations under the principal Act to furnish a return for a prescribed accounting period, the Commissioners may assess to the best of their judgment the amount of tax likely to be due from him in respect of that period and notify the amount assessed to him.

(4) Where an amount is assessed and notified to the person concerned-

(a) under any provision of paragraph 4 of Schedule 7 to the principal Act, or

(b) under subsection (3) above,

then, notwithstanding any provision of the principal Act (or this Act) as to appeals, that amount shall be deemed to be an amount of tax due on the date of the order providing for this subsection to have effect.

(5) In any case where-

(a) notice of appeal has been given against a decision of the Commissioners with respect to any of the matters referred to in subsection (3) of section 40 of the principal Act (assessments etc.), and

(b) an application is made by the Commissioners for an order that subsection (4) above shall have effect in relation to the amount which is referred to in the said subsection (3) as the amount which the Commissioners have determined to be payable as tax,

the tribunal shall determine the application without regard to the question whether, under paragraph (b) of the said subsection (3), a tribunal has decided, or would be likely to decide, that the appeal should be entertained without the payment or deposit of the amount concerned.

(6) Subsection (4) of section 40 of the principal Act (which, among other matters, provides for payment of interest on tax paid in excess of liability) shall have effect in relation to an amount paid by reason of the application of subsection (4) above as it applies in relation to an amount paid in pursuance of subsection (3) of that section.

(7) Rules under paragraph 9 of Schedule 8 to the principal Act (procedural rules with respect to appeals to tribunals) may include the like provision with respect to applications under subsection (1) above as may be made with respect to appeals.

(8) Subject to subsection (4) above, sub-paragraphs (9) and (10) of paragraph 4 of Schedule 7 to the principal Act (effect of assessment and notification and provisions as to personal representative, trustee in bankruptcy etc.) apply where a sum is assessed under subsection (3) above as they apply where a sum is assessed under any provison of that paragraph.

Assessments: time limits and supplementary assessments.

12.-(1) Subject to the following provisions of this section, an assessment -

(a) under any provision of paragraph 4 of Schedule 7 to the principal Act, or

(b) under section 10 above,

shall not be made more than six years after the end of the prescribed accounting period or importation concerned or, in the case of an assessment under section 10 above of an amount due by way of a penalty which is not among those referred to in subsection (2) of that section, six years after the event giving rise to the penalty.

(2) Subject to subsection (5) below, an assessment under section 10 above of an amount due by way of any penalty, interest or surcharge referred to in subsection (2) of that section may be made at any time before the expiry of the period of three years beginning when the amount of tax due for the prescribed accounting period concerned has been finally determined.

(3) In relation to an assessment under section 10 above, any reference in subsection (1) or subsection (2) above to the prescribed accounting period concerned is a reference to that period which, in the case of the penalty, interest or surcharge concerned, is the relevant period referred to in subsection (2) of that section.

(4) Subject to subsection (5) below, if the Commissioners have reasonable grounds for believing that tax has been or may have been lost -

(a) as a result of conduct falling within section 2(1) above or for which a person has been convicted of fraud, or

(b) in circumstances giving rise to liability to a penalty under section 3 or section 4 above,

an assessment may be made as if, in subsection (1) above, each reference to six years were a reference to twenty years.

(5) Where, after a person's death, the Commissioners propose to assess a sum as due by reason of some conduct (howsoever described) of the deceased, including a sum due by way of penalty, interest or surcharge, -

(a) the assessment shall not be made more than three years after the death; and

(b) subsection (4) above shall have effect as if the reference therein to twenty years were a reference to nine years.

(6) Sub-paragraphs (7) and (8) of paragraph 4 of Schedule 7 to the principal Act (which are superseded by the preceding provisions of this section) shall cease to have effect.

(7) If, otherwise than in circumstances falling within sub-paragraph (5)(b) of paragraph 4 of Schedule 7 to the principal Act (further evidence relating to an assessment under sub-paragraph (1) or sub-paragraph (2) of that paragraph), it appears to the Commissioners that the amount which ought to have been assessed in an assessment under any provision of that paragraph or under section 10 above exceeds the amount which was so assessed, then, -

(a) under the like provision as that assessment was made, and

(b) on or before the last day on which that assessment could have been made,

the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

Amendments of Schedule 7 to the principal Act.

13. Schedule 7 to the principal Act (administration, collection and enforcement) shall be amended in accordance with Schedule 2 to this Act.

Mitigation and appeals

Power of Commissioners to mitigate penalties, interest and surcharge.

14.-(1) The Commissioners may, as they see fit, mitigate or remit any penalty, interest or surcharge for which a person is liable under sections 2 to 8 above.

(2) The power of the Commissioners under this section may be exercised after, as well as before, an assessment is made under section 10 above; and where the power is exercised after an amount assessed has been notified to the person concerned, the Commissioners shall vary or, as the case may be, discharge the assessment and notify him accordingly.

Amendments of section 40 of principal Act.

15.-(1) In section 40 of the principal Act (appeals), at the end of subsection (1) (decisions which are appealable) there shall be added the following paragraphs:-

"(o) any liability to a penalty or surcharge by virtue of any of sections 2to 6 and 8 of [the Finance Act 1985];

(p) the amount of any penalty, interest or surcharge specified in an assessment under section 10 of that Act;

(q) the making of an assessment on the basis set out in section 12(4) of that Act."

(2) After subsection (1) of that section there shall be inserted the following subsection:-

"(1A) Without prejudice to section 2(4) of [the Finance Act 1985], nothing in subsection (1)(p) above shall be taken to confer on a tribunal any power to vary an amount assessed by way of penalty, interest or surcharge except in so far as it is necessary to reduce it to the amount which (disregarding any mitigation by the Commissioners) is appropriate under sections 2 to 8 of that Act."

(3) In subsection (2) of that section (appeals not to be entertained unless all required returns have been made and the amounts payable have been paid) after the word "and" there shall

be inserted the words "except in the case of an appeal against a decision with respect to the matter mentioned in subsection (1)(n) above, unless he".

(4) In subsection (3) of that section, for the words "paragraph (b) or (m)" there shall be substituted the words "any of paragraphs (b), (m), (o) and (p)".

(5) After subsection (3) of that section there shall be inserted the following subsection:-

"(3A) Where, on an appeal against a decision with respect to any of the matters mentioned in paragraph (m) above, -

(a) it is found that the amount specified in the assessment is less than it ought to have been, and

(b) the tribunal gives a direction specifying the correct amount,

the assessment shall have effect as an assessment of the amount specified in the direction and that amount shall be deemed to have been notified to the appellant."

Settling appeals by agreement.

16.-(1) Subject to the provisions of this section, where a person gives notice of appeal under section 40 of the principal Act and, before the appeal is determined by a value added tax tribunal, the Commissioners and the appellant come to an agreement (whether in writing or otherwise) under the terms of which the decision under appeal is to be treated -

(a) as upheld without variation, or

(b) as varied in a particular manner, or

(c) as discharged or cancelled,

the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, a tribunal had determined the appeal in accordance with the terms of the agreement (including any terms as to costs).

(2) Subsection (1) above shall not apply where, within thirty days from the date when the agreement was come to, the appellant gives notice in writing to the Commissioners that he desires to repudiate or resile from the agreement.

(3) Where an agreement is not in writing -

(a) the preceding provisions of this section shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the Commissioners to the appellant or by the appellant to the Commissioners; and

(b) references in those provisions to the time when the agreement was come to shall be construed as references to the time of the giving of that notice of confirmation.

(4) Where -

(a) a person who has given a notice of appeal notifies the Commissioners, whether orally or in writing, that he desires not to proceed with the appeal; and

(b) thirty days have elapsed since the giving of the notification without the Commissioners giving to the appellant notice in writing indicating that they are unwilling that the appeal should be treated as withdrawn,

the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and the Commissioners had come to an agreement, orally or in writing, as the case may be, that the decision under appeal should be upheld without variation.

(5) References in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal.

Certain appeals to lie directly to the Court of Appeal.

17.-(1) The Lord Chancellor may by order provide that -

(a) in such classes of appeal as may be prescribed by the order, and

(b) subject to the consent of the parties and to such other conditions as may be so prescribed,

an appeal from a value added tax tribunal shall lie to the Court of Appeal.

(2) An order under this section -

1971 c.62.

(a) may provide that section 13 of the Tribunals and Inquiries Act 1971 (which provides for appeals to the High Court from, among other tribunals, a value added tax tribunal) shall have effect, in relation to any appeal to which the order applies, with such modifications as may be specified in the order; and

(b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(3) This section does not extend to Scotland.

Procedural rules governing appeals.

18. Paragraph 9 of Schedule 8 to the principal Act (rules with respect to procedure to be followed on appeals to value added tax tribunals) shall be amended as follows:-

(a) after the words "on appeals to" there shall be inserted the words "and in other proceedings before";

(b) in paragraph (d) the words "and produce documents" shall be omitted;

(c) at the end of paragraph (d) there shall be inserted the following paragraph:-

"(dd) for discovery and for requiring persons to produce documents"; and

(d) at the end of paragraph (e) there shall be added the words "or to produce documents".

Miscellaneous

Penalty for failure to comply with directions etc. of tribunal.

19. At the end of paragraph 9 of Schedule 8 to the principal Act (procedural rules for tribunals) there shall be added the following paragraph:-

"10.-(1) A person who fails to comply with a direction or summons issued by a value added tax tribunal under rules made under paragraph 9 above shall be liable to a penalty not exceeding £1000.

(2) A penalty for which a person is liable by virtue of sub-paragraph (1) above may be awarded summarily by a tribunal notwithstanding that no proceedings for its recovery have been commenced.

(3) An appeal shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland, from the award of a penalty under this paragraph, and on such an appeal the court may either confirm or reverse the decision of the tribunal or reduce or increase the sum awarded.

(4) A penalty awarded by virtue of this paragraph shall be recoverable as if it were tax due from the person liable for the penalty."

Enforcement of certain decisions of tribunal.

20.-(1) In any case where, -

(a) on an appeal under section 40 of the principal Act, a value added tax tribunal in England and Wales confirms or varies an amount which is, or is recoverable as, tax due from any person, and

(b) the decision of the tribunal on appeal is registered by the Commissioners in accordance with rules of court,

payment of that amount may be enforced by the High Court as if it were an amount due to the Commissioners in pursuance of a judgment or order of the High Court.

(2) If, on an appeal falling within subsection (1) above, costs are awarded to the Commissioners, the reference in that subsection to payment of the amount confirmed or varied by the tribunal includes a reference to payment of the costs so awarded.

(3) Subject to subsection (4) below, any decision of a value added tax tribunal in Scotland on an appeal under section 40 of the principal Act which confirms or varies an amount which is, or is recoverable as, tax due from any person may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.

(4) A decision of a tribunal shall not be recorded under subsection (3) above until -

(a) any period within which the decision may be appealed has expired without an appeal being made; or

(b) where such an appeal is made, it is finally disposed of.

(5) In any case where, on an appeal under section 40 of the principal Act, a value added tax tribunal in Northern Ireland confirms or varies an amount which is, or is recoverable as, tax due from any person, -

(a) payment of that amount, together with any costs awarded on the appeal to the Commissioners, may be enforced by the Enforcement of Judgments Office; and

(b) a sum equal to that amount, together with any such costs, shall be deemed to be payable under a money judgment within the meaning of Article 2(2) of the Judgments Enforcement (Northern Ireland) Order 1981, and the provisions of that Order shall apply accordingly.

S.I. 1981/226 (N.I.6).

Insolvency.

21. At the end of subsection (4) of section 31 of the principal Act (power by regulations to make provision for persons who carry on a business of a taxable person who has become bankrupt or incapacitated etc.) there shall be added the following subsection:-

"(5) In relation to a company which is a taxable person, the reference in subsection (4) above to the taxable person having become bankrupt or incapacitated shall be construed as a reference to its being in liquidation or receivership."

Inter-pretation and con-struction. 1983 c.55.

22.-(1) In these sections "the principal Act" means the Value Added Tax Act 1983.

(2) In relation to a prescribed accounting period, any reference in these sections to credit for input tax includes a reference to any sum which, in a return for that period, is claimed as a deduction from tax due.

(3) These sections shall be construed as one with the principal Act, except that -

(a) references in section 39(9) of that Act (application of certain provisions to offences and penalties) to penalties do not include references to penalties under sections 2 to 6 above; and

(b) section 45(2) of that Act (statutory instruments to be subject to annulment) does not apply to statutory instruments made by the Treasury in exercise of the powers conferred by any of sections 1(7), 3(7), 7(10), 8(7) and 9(4) above (commencement orders).

SCHEDULE 1 Section 1.

SECTION 39 OF THE PRINCIPAL ACT, AS AMENDED, EXCLUDING SUBSECTION (8)

"Offences and penalties.

39.-(1) If any person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of tax by him or any other person, he shall be liable -

(a) on summary conviction, to a penalty of the statutory maximum or of three times the amount of the tax, whichever is the greater, or to imprisonment for a term not exceeding 6 months or to both; or

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.

(1A) Any reference in subsection (1) above or subsection (3) below to the evasion of tax includes a reference to the obtaining of -

(a) a payment under section 14(5) above; or

(b) a refund under section 21 or section 22 above; or

(c) a repayment under section 23 above;

and any reference in those subsections to the amount of the tax shall be construed, -

(i) in relation to tax itself or a payment falling within paragraph (a) above, as a reference to the aggregate of the

amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated; and

(ii) in relation to a refund or repayment falling within paragraph (b) or paragraph (c) above, as a reference to the amount falsely claimed by way of refund or repayment.

(2) If any person -

(a) with intent to deceive produces, furnishes or sends for the purposes of this Act or otherwise makes use for those purposes of any document which is false in a material particular; or

(b) in furnishing any information for the purposes of this Act makes any statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,

he shall be liable -

(i) on summary conviction, to a penalty of the statutory maximum or, where subsection (2A) or subsection (2B) below applies, to the alternative penalty specified in that subsection if it is greater, or to imprisonment for a term not exceeding 6 months or to both; or

(ii) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.

(2A) In any case where -

(a) the document referred to in subsection (2)(a) above is a return required under this Act, or

(b) the information referred to in subsection (2)(b) above is contained in or otherwise relevant to such a return,

the alternative penalty referred to in subsection (2)(i) above is a penalty equal to three times the aggregate of the amount (if any) falsely claimed by way of credit for input tax and the amount (if any) by which output tax was falsely understated.

(2B) In any case where -

(a) the document referred to in subsection (2)(a) above is a claim for a refund under section 21 or section 22 above or for a repayment under section 23 above, or

(b) the information referred to in subsection (2)(b) above is contained in or otherwise relevant to such a claim,

the alternative penalty referred to in subsection (2)(i) above is a penalty equal to three times the amount falsely claimed.

(2C) The reference in subsection (2)(a) above to furnishing, sending or otherwise making use of a document which is false in a material particular, with intent to deceive, includes a reference to furnishing, sending or otherwise making use of such a document, with intent to secure that a machine will respond to the document as if it were a true document.

(2D) Any reference in subsection (2)(a) or subsection (2C) above to producing, furnishing or sending a document includes a reference to causing a document to be produced, furnished or sent.

(3) Where a person's conduct during any specified period must have involved the commission by him of one or more offences under the preceding provisions of this section, then, whether or not the particulars of that offence or those offences are known, he shall, by virtue of this subsection, be guilty of an offence and liable -

(a) on summary conviction, to a penalty of the statutory maximum or, if greater, three times the amount of any tax that was or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding 6 months or to both; or

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding 7 years or to both.

(3A) Where an authorised person has reasonable grounds for suspecting that an offence has been committed under the preceding provisions of this section, he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

(4) If any person acquires possession of or deals with any goods, or accepts the supply of any services, having reason to believe that tax on the supply of the goods or services or on the importation of the goods has been or will be evaded, he shall be liable on summary conviction to a penalty of level 5 on the standard scale or three times the amount of the tax, whichever is the greater.

(5) If any person supplies goods or services in contravention of paragraph 5(2) of Schedule 7 to this Act, he shall be liable on summary conviction to a penalty of level 5 on the standard scale.

. . . . . .

1979 c.2.

(9) Sections 145 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences under this Act (which include any act or omission in respect of which a penalty is imposed) and penalties imposed under this Act as they apply in relation to offences and penalties under the customs and excise Acts as defined in that Act; and accordingly in section 154(2) as it applies by virtue of this subsection the reference to duty shall be construed as a reference to the tax."

SCHEDULE 2 Section 13.

AMENDMENTS OF SCHEDULE 7 TO THE PRINCIPAL ACT

1.-(1) In paragraph 4 (power of Commissioners to assess tax due), in sub-paragraph (2) (assessments of certain amounts as tax due) for the words "in the prescribed accounting period" there shall be substituted the words "for the prescribed accounting period".

(2) In sub-paragraph (6) (assessment on failure to prove availability or loss or destruction of goods) after the words "supplied by him" there shall be inserted the words "or have been exported from the United Kingdom otherwise than by way of supply".

(3) After sub-paragraph (6) of that paragraph there shall be inserted the following sub-paragraph:-

"(6A) In any case where, -

(a) as a result of a person's failure to make a return for a prescribed accounting period, the Commissioners have made an assessment under sub-paragraph (1) above for that period, and

(b) the tax assessed has been paid but no proper return has been made for the period to which the assessment related, and

(c) as a result of a failure to make a return for a later prescribed accounting period, being a failure by the person referred to in paragraph (a) above or a

person acting in a representative capacity in relation to him, as mentioned in sub-paragraph (4) above, the Commissioners find it necessary to make another assessment under sub-paragraph (1) above,

then, if the Commissioners think fit, having regard to the failure referred to in paragraph (a) above, they may specify in the assessment referred to in paragraph (c) above an amount of tax greater than that which they would otherwise have considered to be appropriate."

2. In paragraph 7(2) (records to be preserved for a period not exceeding three years) for "three" there shall be substituted "six".

3.-(1) In paragraph 8 (furnishing of information and production of documents) for sub-paragraphs (2) and (3) there shall be substituted the following sub-paragraphs:-

"(2) Every person who is concerned (in whatever capacity) in the supply of goods or services in the course or furtherance of a business or to whom such a supply is made and every person who is concerned (in whatever capacity) in the importation of goods in the course or furtherance of a business shall -

(a) furnish to the Commissioners, within such time and in such form as they may require, such information relating to the goods or services or to the supply

or importation as the Commissioners may specify; and

(b) upon demand made by an authorised person, produce or cause to be produced for inspection by that person,-

(i) at the principal place of business of the person upon whom the demand is made or at such other place as the authorised person may reasonably require, and

(ii) at such time as the authorised person may reasonably require,

any documents relating to the goods or services or to the supply or importation.

(3) Where, by virtue of sub-paragraph (2) above, an authorised person has power to require the production of any documents from any such person as is referred to in that sub-paragraph, he shall have the like power to require production of the documents concerned from any other person who appears to the authorised person to be in possession of them; but where any such other person claims a lien on any document produced by him, the production shall be without prejudice to the lien."

(2) In sub-paragraph (4) of that paragraph for the words from "goods" to "services" there shall be substituted the words "goods or services or the importation of goods".

(3) After sub-paragraph (4) there shall be inserted the following sub-paragraphs:-

"(4A) An authorised person may take copies of, or make extracts from, any document produced under sub-paragraph (2) or sub-paragraph (3) above.

(4B) If it appears to him to be necessary to do so, an authorised person may, at a reasonable time and for a reasonable period, remove any document produced under sub-paragraph (2) or sub-paragraph (3) above and shall, on request, provide a receipt for any document so removed; and where a lien is claimed on a document produced under sub-paragraph (3) above, the removal of the document under this sub-paragraph shall not be regarded as breaking the lien.

(4C) Where a document removed by an authorised person under sub-paragraph (4B) above is reasonably required for the proper conduct of a business he shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced."

4. After paragraph 9 there shall be inserted the following paragraph:-

"Power to require opening of gaming machines

9A. An authorised person may at any reasonable time require a person making such a supply as is referred to in subsection (1) of section 13 of this Act or any person acting on his behalf -

(a) to open any gaming machine, within the meaning of that section; and

(b) to carry out any other operation which may be necessary to enable the authorised person to ascertain the amount which, in accordance with subsection (2) of that section, is to be taken as the value of supplies made in the circumstances mentioned in subsection (1) of that secton in any period."

5.-(1) In paragraph 10 (entry and search of premises and persons) in sub-paragraph (3) (search warrants) -

(a) for the words "an offence in connection with the tax" there shall be substituted the words "a fraud offence which appears to him to be of a serious nature";

(b) after the word "authorising" there shall be inserted the words "subject to sub-paragraphs (5) and (6) below";

(c) in paragraph (b) for the words "such an offence" there shall be substituted the words "a fraud offence which appears to him to be of a serious nature"; and

(d) in paragraph (c) the words "to have committed or to be about to commit such an offence or" shall be omitted.

(2) At the end of the paragraph there shall be added the following sub-paragraphs:-

"(4) In sub-paragraph (3) above "a fraud offence" means an offence under any provision of subsections (1) to (3) of section 39 of this Act.

(5) The powers conferred by a warrant under this paragraph shall not be exercisable -

(a) by more than such number of authorised persons as may be specified in the warrant; nor

(b) outside such times of day as may be so specified; nor

(c) if the warrant so provides, otherwise than in the presence of a constable in uniform.

(6) An authorised person seeking to exercise the powers conferred by a warrant under this paragraph or, if there is more than one such authorised person, that one of them who is in charge of the search shall provide a copy of the warrant endorsed with his name as follows:-

(a) if the occupier of the premises concerned is present at the time the search is to begin, the copy shall be supplied to the occupier;

(b) if at that time the occupier is not present but a person who appears to the authorised person to be in charge of the premises is present, the copy shall be supplied to that person; and

(c) if neither paragraph (a) nor paragraph (b) above applies, the copy shall be left in a prominent place on the premises."

6. After paragraph 10 there shall be inserted the following paragraphs:-

"Order for access to recorded information etc.

10A.-(1) Where, on an application by an authorised person, a justice of the peace or, in Scotland, a justice (within the meaning of section 462 of the Criminal Procedure (Scotland) Act 1975) is satisfied that there are reasonable grounds for believing - 1975 c.21.

(a) that an offence in connection with the tax is being, has been or is about to be committed, and

(b) that any recorded information (including any document of any nature whatsoever) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,

he may make an order under this paragraph.

(2) An order under this paragraph is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates shall -

(a) give an authorised person access to it, and

(b) permit an authorised person to remove and take away any of it which he considers necessary,

not later than the end of the period of seven days beginning on the date of the order or the end of such longer period as the order may specify.

(3) The reference in sub-paragraph (2)(a) above to giving an authorised person access to the recorded information to which the application relates includes references to permitting the authorised person to take copies of it or to make extracts from it.

(4) Where the recorded information consists of information contained in a computer, an order under this paragraph shall have effect as an order to produce the information in a form in which it is visible and legible and, if the authorised person wishes to remove it, in a form in which it can be removed.

(5) This paragraph is without prejudice to paragraphs 8 and 10 above.

Procedure where documents etc. are removed

10B.-(1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 10 or 10A above shall, if so requested by a person showing himself -

(a) to be the occupier of premises from which it was removed, or

(b) to have had custody or control of it immediately before the removal,

provide that person with a record of what he removed.

(2) The authorised person shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to sub-paragraph (7) below, if a request for permission to be granted access to anything which -

(a) has been removed by an authorised person, and

(b) is retained by the Commissioners for the purpose of investigating an offence,

is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an authorised person.

(4) Subject to sub-paragraph (7) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall -

(a) allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it, or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) Where anything is photographed or copied under sub-paragraph (4)(b) above the photograph or copy shall be supplied to the person who made the request.

(6) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(7) There is no duty under this paragraph to grant access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice -

(a) that investigation;

(b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or

(c) any criminal proceedings which may be brought as a result of -

(i) the investigation of which he is in charge, or

(ii) any such investigation as is mentioned in paragraph (b) above.

(8) Any reference in this paragraph to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant or order concerned as being the officer so in charge.

10C.-(1) Where, on an application made as mentioned in sub-paragraph (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 10B above, the authority may order that person to comply with the requirement.

(2) An application under sub-paragraph (1) above shall be made, -

(a) in the case of a failure to comply with any of the requirements imposed by sub-paragraphs (1) and (2) of paragraph 10B above, by the occupier of the premises from which the thing in question was removed or by the person who had custody or control of it immediately before it was so removed, and

(b) in any other case, by the person who had such custody or control.

(3) In this paragraph "the appropriate judicial authority" means-

(a) in England and Wales, a magistrates' court;

(b) in Scotland, a sheriff; and

(c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the Magistrates' Courts (Northern Ireland) Order 1981.

S.I.1981/1675 (N.I.26).

(4) In England and Wales and Northern Ireland, an application for an order under this paragraph shall be made by way of complaint; and sections 21 and 42(2) of the Interpretation Act (Northern Ireland) 1954 shall apply as if any reference in those provisions to any enactment included a reference to this paragraph."

1954 c.33 (N.I.).

E.R.

PRIME MINISTER

Pa Dms 6/3

MC

The National Prosecution Service

As expected, H Committee decided in favour of the introduction of a national independent prosecution service despite the weight of opinion in consultation in favour of a local service. (H(84)6th Mtg)

Some doubts were expressed about the Home Secretary's manpower and expenditure estimates. It was suggested that the forecast net saving of £3m might even become a net cost of about the same order. It was agreed that further attention should be paid to the scope for efficiency savings.

The Home Secretary will be working towards an announcement in the next few weeks. This will require careful handling, in relation both to the interests of the staff affected and in relation to the sensitivities of local authorities.

DMB

5 March 1984

MR REDWOOD

Independent Prosecution Service

The Prime Minister saw your note about the Independent Prosecution Service proposals overnight. She agreed that I should speak to the Lord President's Office on the lines you recommended, and I have done so this morning. We await the minutes.

DB

1 March 1984

CONFIDENTIAL

E.R.

Prime Minister (1)

29 February 1984

MR FLESHER

Agree I register these points with the Lord President's Office?

DAB 29/2

INDEPENDENT PROSECUTION SERVICE

The Independent National Prosecution Service is to be welcomed, and is a fulfilment of a Manifesto pledge.

It would be useful if, in discussion at H, the question was raised about how the transfer of staff is to be managed, and how some of the savings are going to be achieved. The paper sets out for illustrative purposes possible savings of £3.2 million. This, however, depends on reducing the number of police posts and, presumably, on transferring some policemen from prosecution work to other duties. The Home Office seems unsure about whether this is or is not practicable. Is it going to create a row with existing staff?

What is envisaged is the establishment of a service with 2,500 people involved. It would be by far the biggest law practice in the country. Its management would therefore require:

(a) care in recruiting the right calibre of qualified professional staff;

(b) good management to maintain, measure and control the quality of the service;

(c) creating a uniform service across the country.

When presenting the new service, it would also be important to stress that we anticipate a substantial improvement in the quality and speed of the service being offered.

Conclusion

If the Prime Minister agrees with these caveats, she could ask you to mention them to Lord Whitelaw to see that the questions of management and service quality, and the handling of the transfer or recruitment of staff, are properly considered at H.

JOHN REDWOOD

CONFIDENTIAL

PS Dmb 27/2

(4)

PRIME MINISTER

Independent Prosecution Service

You may wish to note that H Committee will be considering the form of an independent prosecution service at its next meeting.

There is a Manifesto commitment to introduce an independent service, i.e. one which is independent of the police. In a White Paper last Autumn, the Government sought views on whether the service should be organised nationally or locally (with a preference for the former). In his paper attached, the Home Secretary reports on the consultations, and - with support from the Attorney General - comes down firmly in favour of a national service. He believes that local administration would necessarily divorce responsibility for general policy, which would rest with the Attorney General, from responsibility for policy in particular cases; and that such a distinction would be unworkable.

Setting up a national prosecution service would require 2,500 additional staff, but of these nearly 1,700 would ~~replace~~ come from existing staff in prosecuting solicitors' departments. A small saving in public expenditure is expected - about £2 million a year.

If the Committee agrees to the Home Secretary's recommendation, he would like to make an announcement before the Police and Criminal Evidence Bill leaves the Commons. Subject to Cabinet's approval, there is a provisional place for legislation in the programme for next session.

Dmb

MT

23 February 1984

PRIME MINISTER

The Chief Whip telephoned to let you know of two developments that might appear in tomorrow morning's newspapers:-

1. The Labour Party decided at the Shadow Cabinet this evening to ask for more "Short money". The Chief Whip does not take this request very seriously.

2. There is a row brewing over the Home Secretary's reluctance to serve on the Police and Criminal Evidence Bill Committee. He is already on the Prevention of Terrorism Bill Committee and the Opposition refuse to give a firm date by which this committee will have concluded. The Chief Whip has advised the Home Secretary nevertheless to go on the Police and Criminal Evidence Bill Committee, on the understanding that he will only attend occasionally. Mr. Brittan is mulling over this suggestion and promises to give Mr. Kaufman an answer tomorrow. If the answer is "no", the Labour Party will make a fuss.

F.E.R.B.

9 November 1983

E.R.

Home Off

BRIEFING FOR THE PRIME MINISTER

POLICE AND CRIMINAL EVIDENCE BILL

The Police and Criminal Evidence Bill will be published today at 3.30 pm together with a White Paper explaining the ways in which the Bill reforms police complaints and disciplinary procedures.

A White Paper setting out proposals for an independent prosecution service will also be published.

BACKGROUND NOTE

Details of the material being published with the Police and Criminal Evidence Bill and available in the Vote Office at 3.30, were given in the attached Written Answer printed in Hansard of 26th October (Col 100).

26.10.83

Wednesday, 26th October 1983.

Written No. 167

Mr Mark Carlisle (Warrington South): To ask the Secretary of State for the Home Department, what additional material he intends to make available on the publication of the Police and Criminal Evidence Bill.

MR. LEON BRITTAN

I propose to publish tomorrow with the Bill a White Paper describing and explaining the ways in which the Bill reforms the police complaints and disciplinary procedures.

A draft code of practice for the searching of premises and seizure of property which the Bill requires me to issue will be published at the same time, together with the revised drafts of the codes of practice for the detention, treatment, questioning and identification of persons by the police. Procedural guidance for the field trials of the tape recording of police interviews with suspects will be published separately. Copies of these drafts and of the procedural guidance will be placed in the Library and the Vote Office, and sent to a wide range of interested bodies. Copies will also be available, on request, from the Home Office, Room 531, Queen Anne's Gate.

A briefing guide which is intended to promote a better understanding of the Bill's provisions, will also be available in the Vote Office and on request from the Home Office.

Wednesday, 26th October 1983.

Written No. 168

Mr. Mark Carlisle (Warrington South): To ask the Secretary of State for the Home Department, when he will bring forward proposals for the establishment of an independent prosecution service in England and Wales.

MR. LEON BRITTAN

A White Paper, to be published tomorrow, will set out proposals regarding the functions and structure of a prosecution service independent of the police. These proposals are put forward with a view to consultation and discussion in advance of legislation.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

20 October 1983

Dear Rennie,

POLICE AND CRIMINAL EVIDENCE BILL

As you know, Legislation Committee agreed yesterday to the introduction of this Bill in the Commons. I should be grateful if you would arrange for notice of presentation to be tabled on Tuesday, 25 October, for introduction of the Bill at the commencement of public business on Wednesday, 26 October, and publication on Thursday, 27 October at 3.30pm.

The Bill should be presented by Mr Secretary Brittan, supported by:

Mr Secretary Prior
Mr Secretary Heseltine
Mr Secretary Younger
Mr Secretary Edwards
Mr Attorney General
Mr Douglas Hurd
Mr Barney Hayhoe

The Home Secretary is holding a full scale Press Conference shortly after publication and I should be grateful if you would arrange for 160 copies of the Bill addressed to the Home secretary to be delivered to the Vote Office for collection by mid-day on 27 October.

I am sending copies of this letter to Tim Flesher (Prime Minister's Office), Simon Hickson (Cabinet Office), David Heyhoe (Lord President's Office), Murdo Maclean (Chief Whip's Office, Commons), David Beamish (Chief Whip's Office, Lords) and Brian Shillito.

Yours sincerely

T C MORRIS
Parliamentary Clerk

J D M Rennie Esq

PRIME MINISTER

H COMMITTEE

H agreed yesterday:

1. To introduce a revised Police and Criminal Evidence Bill as soon as possible after Parliament resumes. The main revisions are:-

(a) provision in the Bill itself, rather than in a code, for tape recordings of police interviews with suspects;

(b) establishment of a Police Complaints Authority;

(c) intimate body searches permitted only for protective purposes, and

(d) tighter definition of serious arrestable offences.

The Committee felt the Government should this time take the initiative in public discussion of the Bill, and seek support from Government backbenchers.

2. To publish a White Paper on an independent national prosecution service. Reservations were expressed about the creation of a centralised bureaucracy, and the effects on public expenditure and civil service manpower. With these points in mind, the Committee invited the Home Secretary to give the White Paper "green edges". They will be considering a redraft, with a view to publication before the second reading of the Police and Criminal Evidence Bill.

The Committee also discussed representation of the people. The Lord President has minuted you separately about this.

DB

5 October, 1983

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

18 April 1983

Dear Tim

You asked Tony Rawsthorne for some readily available background material on two aspects of the Police and Criminal Evidence Bill - detention powers and intimate searches.

... I enclose a paper dealing with the NCCL
... criticisms of the detention powers, a note on Government amendments to the detention
... scheme and a copy of a letter sent by Mr Mayhew's office to the BMA concerning intimate searches.

Yours ever

C J WALTERS

Tim Flesher, Esq

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

13th January 1983

I am writing on behalf of Mr. Mayhew to respond to the comments you made about the Police and Criminal Evidence Bill during the BBC radio programme 'The World at One' on 23rd December.

During that programme you said that the Bill envisaged that doctors would be involved in carrying out intimate searches of suspects without their consent, and expressed concern that it was therefore in conflict with medical ethics. You may be assured that the Government fully understands and respects the position that doctors do not, as a matter of principle, carry out any procedures without the consent of their subject; and it believes that the Bill does not, in fact, abrogate this important principle.

Clause 43 of the Bill, which provides for the searching of persons in police custody subject to special restrictions on intimate searches, provides that searches must be undertaken either by a doctor or by a person of the same sex as the person to be searched. Paragraph 3.2 of the draft code of practice on the treatment and questioning of persons suspected of crime adds to this by requiring the police, where an intimate search is to be made, to ask the person concerned whether he wishes the search to be carried out by a doctor and, if he so wishes, to ask a doctor if he is prepared to undertake the search.

Neither the Bill nor the draft code of practice, therefore, envisage that doctors will ever carry out intimate searches except where the person concerned has expressly agreed to be searched by a doctor. Furthermore, even where the person concerned has agreed, the doctor concerned will have an absolute right to refuse to undertake the search if, for whatever reason, he is not prepared to carry it out.

Where a doctor declines to carry out an intimate search, or where the person does not consent to being searched by a doctor, then the search will be conducted by some person other than a doctor (in practice a police officer) who is of the same sex. Doctors will not have to become involved in any way; but I am sure you will recognise that in those few cases where an intimate search of a suspect may be necessary, the unwillingness of a doctor to participa

/for ethical

Dr. John Dawson

for ethical or indeed any reasons cannot have the effect of preventing the search altogether. Indeed, the provision made in the legislative proposals now before Parliament for the participation of doctors is intended solely to give the suspect a protection which he would otherwise lack.

These provisions were prepared after consultation with the British Medical Association, as represented by the Chairman of the Central Ethical Committee, and are intended to incorporate the various points he put to us.

M. C. PEDLER
Private Secretary

Home Affairs: Rights of entry

Prime Minister: Shall I ask the Home Office for a note on the background to X and Y (Both were recommended by the Royal Commission on Criminal Procedure) JR 15/4

15 April 1983
Policy Unit

PRIME MINISTER

POLICE AND CRIMINAL EVIDENCE BILL

The amendment to the Bill announced yesterday by the Home Secretary, about the confidentiality of medical and other information, does remove some of its most contentious provisions.

But there are several other clauses to which equally cogent and powerful objections exist. I think we can meet the more important of these without undermining the Bill's value for the fight against crime. Specifically:

X (a) Clauses 32-36 which permit the detention of a suspect for up to four days in certain circumstances. There is something alien and un-English about this provision, which has been attacked by the Law Society, Criminal Bar Association and the Magistrates' Association. As David Hart pointed out, this is the provision which "the street" does not like the sound of. The maximum period for detention could safely be reduced by half.

Y (b) Clauses 43-51, dealing with body searches of suspects. The proposed power to enable police to carry out intimate searches without the consent of the suspect appears, as some critics have pointed out, to permit a form of authorised assault or worse. The BMA, Law Society and Criminal Bar Association are among those against it.

Attention to these matters would allay many of the fears of the responsible and authoritative bodies who have spoken out against the Bill. It would not, of course, satisfy the NCCL or the GLC Police Committee, but something might be wrong if we were not being attacked by them. Objections still remain to increased police powers of stop and search and of arrest, on changes in the law of evidence in criminal proceedings, and of the proposals for the new consultative arrangements and for complaints procedure. But we can probably weather these in the interests of more effective crime fighting.

I suggest that we ask the Home Secretary whether he intends to have another look, particularly at Clauses 32-36.

FERDINAND MOUNT FM

Home affairs: Rights of entry Pt 2

1. MR. RICKETT

2. PRIME MINISTER

As I believe you know, the Home Secretary has decided to give in to BMA pressure on the Police and Criminal Evidence Bill and the attached answer announces his intention of exempting medical and other similar personal records from the relevant Clause of the Bill. I gather that the Police, when pressed, could not actually cite any examples of cases in which they had been impeded by the reluctance of the medical profession to give up documents which perhaps makes one wonder why they asked for this power in the first place. The Clause will still apply to articles. I gather that the BMA have accepted this.

I understand that the Home Secretary is going to make the same concession to journalists. This is, of course, recognition of reality; it has never harmed any journalists' career to go to gaol for protecting their sources.

14 April 1983

Thursday, 14th April, 1983.

Written No.

Sir Edward Gardner (South Fylde): To ask the Secretary of State for the Home Department, whether he has yet reached any conclusions as a result of his reconsideration of Clause 10 of the Police and Criminal Evidence Bill in the light of the representations made to him; and if he will make a statement.

MR. WILLIAM WHITELAW

The purpose of the Police and Criminal Evidence Bill is to modernise the law governing the investigation of crime and to promote the ability of the police to bring to justice those responsible for crime. In furtherance of these objectives, Clause 10 of the Bill, which follows the recommendations of the Royal Commission on Criminal Procedure, and provides for stringent safeguards, is intended to enable the police when investigating serious crime to obtain access to evidence of such crime for use in criminal proceedings in cases where considerations of confidentiality make it difficult for those holding such evidence to release it. As was made clear in the proceedings of the Standing Committee, it has never been the Government's intention, nor is it the effect of the Clause, that the police should be empowered to obtain material which would not itself be admissible in evidence in subsequent criminal proceedings, by reason, for example, of the rule against hearsay evidence.

However, I have taken very seriously and sympathetically the anxieties expressed by members of the medical and other caring professions and their voluntary counterparts that the provisions of the Clause would, however unintentionally, adversely affect their confidential relationships with those who seek their help; and I promised to look at the Clause again in this light.

To reassure those who are concerned and to remove any uncertainty I have decided to bring forward amendments to provide that confidential personal records relating to the work of the medical and other caring professions and their voluntary counterparts and other voluntary counselling agencies shall be altogether exempt from the provisions of the Clause.

The application of Clauses 9 and 10 to material held by journalists has also been the subject of representations. My hon. and learned Friend will be meeting representatives of the profession very shortly, and will discuss with them changes which I have it in mind to propose to meet the concern of journalists.

Articles (including documents) held on a confidential basis, other than the personal records which I have mentioned, will remain within the scope of the clause, but I shall propose the introduction of further safeguards on their production.

I also think that it would be desirable to take the opportunity presented by the Bill to extend so far as is reasonably practicable the protection of the procedure contained in Clause 10 to documents held on a confidential basis (for example by legal or financial advisers) which are at present, under the existing and less stringent statutory provisions, liable to seizure as a result of the execution of a magistrate's search warrant. I intend therefore to bring forward an amendment which will achieve this.

In this form Clause 10 of the Bill, while improving the ability of the police to obtain evidence of serious crime, will introduce safeguards against intrusion upon personal confidences which will be considerably stronger than those recommended by the Royal Commission on Criminal Procedure.

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

13 April 1983

Dear Tim,

As you will know, the Home Secretary has been reviewing the provisions of clause 10 of the Police and Criminal Evidence Bill relating to disclosure of confidential records, in the light of the representations he has received.

He intends to announce tomorrow, in answer to a written Question, the changes he proposes to bring forward at Report Stage. You may like to see the text of the answer, a copy of which I attach. The answer will not be given until after Prime Minister's Questions.

... I am also sending copies to Private Secretaries to members of H Committee and to Richard Hatfield.

Yours ever,
Tony Rawsthorne

A R RAWSTHORNE

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Prime Minister

Lord Keith has, I am told, set up a Press conference on Wednesday 23 March.

The Chancellor is going to try to get Lord Keith to play down the more controversial aspects of his report. But he thinks that it would do more harm than good to try and persuade him to call off his Press conference or postpone publication.

MCS 18/3

SCNO.

Prime Minister 2

To note.

MS 18/3

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

KEITH COMMITTEE

1. In 1980 we set up a committee under Lord Keith of Kinkel to review the enforcement powers of the Revenue Departments. It has recently completed the first part of its work, dealing with income tax and VAT powers. This is to be published on 23 March, as announced.

Background

2. The Committee was set up in fulfilment of a Manifesto pledge. That in turn was prompted by concern, especially amongst small traders, about the powers associated with VAT; about the more recent Inland Revenue powers to search premises; and about the Revenue's new techniques of "in depth" investigation of business accounts. On the other side, there was also anxiety - subsequently reinforced by the PAC - about the loss of revenue in the black economy.

Recommendations of the Report

3. Lord Keith has produced a massive first part of his report with a long list of recommendations - over 150 of them. He says that his central theme is "balance". He is seeking to safeguard the taxpayer's reasonable right to privacy and to conduct his affairs without unreasonable intrusion, while giving the Revenue Departments the power which he considers they need to do their job. A secondary

/theme is to align

theme is to align the powers and safeguards of the two Revenue Departments.

4. There are widely differing views about the correct balance. A number of Lord Keith's recommendations, summarised in the attached note, are likely to be contentious, and some highly controversial.

- legal powers

5. There is no doubt that the report will disappoint a number of people - including quite a few of our supporters - who have argued that the Departments' powers are too great and have been used with too little discretion. The Committee concludes that the search powers of the two Departments are necessary, have been operated responsibly, and should be retained. It endorses the Customs and Excise view that visits to traders' premises are essential to the control of VAT. It proposes new obligations on trading taxpayers.

6. The recommendations likely to be controversial include a new right for an Inspector of Taxes to examine traders' records at the business premises, and a new general information power for the Revenue and an extension of the exchange of information between the two Departments at local level (hitherto restricted to a small experiment at Leeds).

7. The report also recommends automatic penalties for the under-declaration of income or VAT and for the late filing of accounts and returns. This may well be a necessary condition here - as in other countries - for any move towards self-assessment. If it achieves the

/intended effect of

intended effect of improving trader compliance, it could lead to substantial staff savings. But it would also have major implications for the working practices of accountants and for their business clients.

- safeguards

8. As against that, some commentators will no doubt welcome the emphasis on safeguards to ensure that powers are used, and are seen to be used, properly. The report recommends a significant strengthening of external, judicial, checks on the Revenue Departments. There would be a new civil penalty code for VAT which would be additional to the criminal code already existing for fraud offences but would replace the present criminal proceedings for VAT regulatory offences. A new code of conduct would govern both Departments' visits to traders' premises. Provision for the right to challenge the use of various powers would add to existing safeguards for the public.

9. The report also recommends significant curtailment of the Revenue Departments' existing discretion. This may have a more mixed reception. It would give the taxpayer greater certainty in his dealing with the Revenue Departments. But it would make it more difficult for both Departments to deal flexibly and sympathetically with individual hard cases. So its practical implications could therefore be controversial.

10. There are unwelcome staff implications in some of the recommendations - notably the suggestion that income tax returns should be issued annually, or at least triennially, to every taxpayer. This is one of the

/measures directed against

measures directed against the black economy - Lord Keith wants activity against the Black Economy stepped up in the interests of what he sees as more even-handed administration.

- handling

11. When the report is published on 23 March, Lord Keith and his colleagues will give a press conference, and will issue a Press Notice describing their broad approach. It will be explicitly in the name of the Committee, not the Government; and we ourselves will be distanced from it.

12. Looking further ahead, it will take some time to digest and evaluate this very long report (of some 1,200 pages in typescript). A variety of interests would be affected, often significantly. There will be pressure from two sides: some, particularly in the small business world, will press us to reject any recommendations for strengthened powers; others - notably the PAC - will want us to implement such recommendations quickly as part of a drive against the black economy.

13. Our stance would therefore be to play it long. We shall stress the need for study followed by consultation - both likely to be lengthy processes. The fact that part 2 will take several months will help.

14. One final point. We announced the publication of the report some days before the writ for the Darlington by-election was moved. The election is of course the day after publication. But I have concluded that an attempt to delay publication at this stage could only /highlight the Report

highlight the Report and its contents. We shall attempt to secure the lowest key presentation and avoid any suggestion that we have accepted the Report's contents.

16. Copies of this minute go to the Home Secretary, the Lord Chancellor, the Secretary of State for Trade, the Attorney-General and Sir Robert Armstrong.

GEOFFREY HOWE

17 March 1983

ANNEX

MAIN RECOMMENDATIONS

Inland Revenue

1. Information

(i) There should be a simpler statutory return for PAYE taxpayers which ideally should be sent annually, but failing that every 3 years. The taxpayer should have to state positively whether he has more than one employment.

(ii) The normal time limit for making a return should be three months (it is 30 days at present). Trading taxpayers should be obliged to submit accounts; initially within 12 months of the end of the accounting year but eventually within 6 or 7 months.

(iii) Failure to render a return or accounts within the new time limits should attract an automatic penalty of 5% of the tax at stake for each month or part of a month, up to a maximum of 30%.

(iv) Traders should be obliged to keep records for direct tax purposes (they already have to keep them for VAT) and to retain them for 6 years.

(v) The Revenue should have a new general information power that would enable the Inspector to require production of any information which in his reasonable opinion is relevant for any tax purpose. The recipient of the notice should have a right of appeal. The power would run against central and local government departments, and replace the present various powers in anti-avoidance provisions.

(vi) The taxpayer should be told when an information notice is served on a third party for information in respect of the taxpayer: certain third parties should be able to recover their costs of compliance.

(vii) Third parties (eg banks) who notify the Revenue of payments to taxpayers should let the taxpayer know they have done so.

2. Checks at business premises

(i) Tax inspectors should have a new power of entry to business premises, on notice, to require production of business records so as to check the accuracy of trading profits. (The Revenue at present can only so inspect wages records.)

(ii) A "code of conduct" governing visits to premises should be prepared, setting out the safeguards available to the taxpayer and published in the form of a leaflet. (Other leaflets should explain taxpayers' rights in an investigation and penalty negotiations. Increased publicity should be given to the taxpayers' rights of access to the Appeal Commissioners.)

3. Subcontractors, agency workers, casuals

(i) There should be the right of appeal against the cancellation of a sub-contractor's certificate.

(ii) The rate of withholding tax for subcontractors (currently 30%) should be reduced to one half of basic rate.

(iii) Tax should be deducted at half the basic rate from payments to agency-worker companies. (We proposed a 30% deduction in the 1981 Finance Bill but withdrew it following criticism.)

(iv) Employers should deduct tax at half the basic rate from payments to casual workers (this would affect up to one million employees - many of whom would be entitled to repayments).

4. Search warrants

(i) The power to search for evidence under warrant should be retained but be restricted to serious cases of suspected tax fraud.

(ii) A production order of the Court should be available to obtain information as an alternative to the search of an unsuspected third party's premises.

(iii) The judicial authority issuing the warrant should be able to impose conditions, as safeguards for the citizen, about the size of the search party, the time the search can start and the presence of police officers. The warrant should contain as much detail of the suspected offence as is practicable and a copy be provided for the occupier of the premises.

(iv) The safeguards for access to seized documents should be enhanced and a grievance procedure established whereby the owner of the documents may appeal to the judicial authority.

NB These recommendations on searches also apply to Customs and Excise.

5. Underdeclarations or omissions : Penalties and interest

(i) The present penalty and interest system, which incorporates a considerable measure of Revenue discretion, should be replaced by an automatic system: interest would be charged in every case

and there would be a fixed 30% penalty whenever the omission exceeded a given level. Omissions below that level would no longer attract a penalty. Where the omission was made with the intention of deceiving to evade tax the penalty should be 100% (but mitigable to 50%). In the meantime the present penalties should be revalorised.

(ii) Both Departments should be required to publish the names of serious defrauders unless there had been a full spontaneous voluntary disclosure.

(iii) Revenue should consider possibility of an interest charge in respect of PAYE tax paid late. Interest and penalties should run in respect of tax on directors' remuneration paid late.

6. Co-operation between Revenue and Customs

(i) The exchange of information between local Revenue and Customs offices should apply nationwide (there is currently an experiment in Leeds).

(ii) A pilot scheme should be established for joint visits to traders and joint local investigations, to cut down the number of tax officials dealing with traders.

7. Black economy

(i) The Revenue should seek out suitable cases of "moonlighting" for prosecution: there should be a set of specific criminal Revenue offences, providing for imprisonment of up to 7 years.

Customs and Excise

8. Control

(i) Control visits should continue but with additional safeguards and minor enhancement of certain powers.

(ii) Appropriate publicity should be given to the powers and safeguards applicable to VAT control visiting in the form of a leaflet setting out a "code of conduct".

(iii) The present separate powers in respect of goods and services should be assimilated, subject to certain safeguards.

9. Search warrants

(i) The judicial authority for issuing VAT search warrants should be raised to a Circuit Judge in England and Wales, to a County Court Judge in Northern Ireland and be maintained at Sheriff level in Scotland.

(ii) All the additional safeguards referred to under paragraph 4 above apply also in respect of VAT searches.

10. Regulatory offences and compliance

(i) Criminal regulatory sanctions in VAT should be abolished and civil penalties introduced for offences such as failure to keep or produce records and failure to furnish returns and pay VAT. A new tariff should provide for higher penalties for persistent offenders.

(ii) Higher assessments should be issued where there is a repeated failure to furnish a VAT return but previous assessments have been paid; and a VAT Tribunal should be empowered to increase assessments on appeal.

(iii) The Department should consider the wider use of early collection visits and the more effective use of enforcement sanctions, including the assessment of civil penalties. If significant non-compliance persists, provision should be made for a system of automatic tax-geared surcharges.

11. The Civil Code

(i) All understatements or overclaims of VAT should bear default interest.

(ii) A civil default of gross negligence attracting a non-mitigable penalty of 30% of the VAT understated or overclaimed together with default interest should be introduced and include the unauthorised issue of tax invoices and failure to notify liability to be registered. Gross negligence should be defined by objective tests.

12. Fraud and Criminal Investigation

(i) A civil default of "civil fraud" defined as an act or omission intended to deceive and attracting a penalty of 100% of VAT evaded, mitigable to 50%, together with default interest, should be introduced but criminal prosecution should remain available at the option of the Department (see also paragraph 5ii above).

(ii) The criminal offence code should be redefined to include input tax offences, the maximum penalty of imprisonment for VAT criminal frauds should be increased from 2 to 7 years and there should be extended time limits for prosecutions.

(iii) The code of questioning applying to the Department as respects the provision of legal advice to suspects in custody and future arrangements for tape recording interviews in custody should follow that applying to the police as eventually enacted as a result of the Police and Criminal Evidence Bill.

(iv) A power of arrest should be conferred on Customs and Excise officers in respect of serious offences of suspected VAT fraud.

POWERS OF ENTRY - CASES HANDLED

Appendix

e Initiated	Subject Matter	Action Taken	Subsequent Action	Conclusion
81 20 February	Draft Dogs (N.I.) Order: proposed powers re enforcement of requirement to have a dog licence or control of stray dogs and re dog kennel or breeding establishments.	Need for powers objected to. Dept. informed. Proposals discussed by S of S and S.G.	a) S.G. reported to S.O.S. (i) some of the proposals were acceptable but could and should be in a different form. (ii) others were not acceptable. b) Amended proposals submitted by S. of S. c) S.G. willing to agree these amended powers (with minor amendments) but does not agree that the powers should be given to DOG WARDENS.	Not yet concluded
20 February	Draft Employment Agencies (N.I.) Order: proposed powers re regulation of employment agencies in N.I.	Need for powers questioned by S.G.	Meeting of Ministers from NIO, Dept of Employment and S.G.	Proposals withdrawn
23 February	Draft Fire Services & Fire Precautions (N.I.) Order: proposed powers prior to compulsory acquisition and to enforce fire safety standards.	Form and content of draft Regs. questioned by S.G.	Amended proposals submitted.	Not yet concluded
23 February	Draft Transport (N.I.) Order: proposed power to enter and survey for purpose of building a railway.	Need for power questioned by S.G.	Amended proposals submitted. The need for these too has been questioned by S.G.	Not yet concluded
25 February	Fisheries Bill: proposed Govt. amendments on Report to give powers re enforcement of fishing quotas etc.	Width of powers disliked, but in view of stage Bill reached (and upon assurance no precedent created) no objection taken.		Bill proceeds with new powers

Date Initiated	Subject Matter	Action Taken	Subsequent Action	Conclusion
1981 6) 2 March	British Telecommunications Bill: proposed Govt. amendments on Report to give power to require marking of equipment and enforcement of such a requirement.	Need for powers questioned by S.G. Meeting with officials. Correspondence with M of S.	Proposals re-submitted for inclusion in H of L. Objected to by S.G.	Proposals withdra
7) 2 March	Draft Poultry Meat (Water Content) Regs: proposal powers re enforcement of E.C. Reg. as to water content in frozen poultry carcases.	Justification called for.		Not yet concluded
8) 4 March	Draft Poultry Meat (Water Content) (N.I.) Regs: analagous powers for N.I. as above.	-ditto-		Not yet concluded
9) 23 April	Draft access to the Countryside (N.I.) Order: proposed power for countryside rangers to enter on land.	Justification for powers questioned at official level.	More limited proposal submitted - limited to land in respect of which the public has access for pleasure but the ranger would not because not there on pleasure.	These limited proposals agreed by S.G.
10) 3 June	Transport Bill: proposed Govt. amendments to give power of entry to require a breath test.	Proposals agreed between Home Office and Transport were submitted by them to S.G., who was not able to accept them.	a) In discussions with Ministers from those two Departments and S.G. some amendments agreed. b) H. Committee convened. Revised proposals agreed (?) c) Correspondence between Home Secretary and S.G. as to what had been agreed - not resolved when time ran out.	Revised proposals added to the Bill on Third Reading in the Lords. Three proposals agreed. One not agreed.

Date Initiated		Subject Matter	Action Taken	Subsequent Action	Conclusion
1981 2 July	11)	Draft Warble Fly (E & W) (Amendment) Order: power to enable a warble fly inspector to enter to supervise treatment.	S.G. suggested that the power was not necessary.		Proposal withdrawn.
10 July	12)	Statutory Sick Pay powers of entry: proposals in relation to the new ESSP system proposed.	S.G. has suggested that the powers are not necessary.		
10 July	13)	Draft Progressive Wilt in Hops Disease Order: power of entry to secure destruction of hops planted in breach of the Order.	S.G. queried necessity. Officials discussed with MAFF.		Limited power proceeded with. Proposal for wide power withdrawn.
16 July	14)	Suckler Cow Premium Scheme: power of entry to check compliance with conditions for payment of EC premiums.	S.G. queried necessity for a separate power of entry. Officials discussed with MAFF.		
17 July	15)	Draft Sea Fishing (Enforcement of Community Conservation Measures) Order; powers to ensure compliance with the conservation regulations.	S.G. accepted need for power of entry but queried other powers incidental to this proposed in the draft Order. Officials discussed with MAFF.		

CONFIDENTIAL

Ref. No: HAC(82)8

HOME AFFAIRS.

Police and Criminal Evidence Bill

2nd Reading

30th November 1982

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CONTENTS

Introduction

The bill follows the Royal Commission on Criminal Procedure's Report (Cmnd 8092) of January 1981 (the Philips Royal Commission). It deals with Part I of that report, improving police powers of investigation and strengthening the citizen's rights under investigation. Although some of the Commission's major recommendations are implemented, the Government has decided not to stick to others.

Mr Patrick Mayhew, Minister of State at the Home Office, said on publication of the bill on 18th November 1982:

> "This is a major step towards more effective enforcement of the law in this country. Much of it is to do with the powers of the police. We are making these considerably stronger and clearer, and bringing them up to date. But it is in a free society that our police have to work, and it is a free society that they protect. Therefore their own powers must be carefully balanced: and or else freedom suffers unwarrantably. So the Bill is also concerned with safeguards for the citizen who falls under suspicion. These too are clarified, and in some cases strengthened. Some are written in the Bill itself, and thus given statutory force for the first time. Others are to be set out in codes of practice, to be approved by Parliament, and thus for the first time brought under Parliamentary scrutiny."

1. The Philips Royal Commission

The then Prime Minister Mr James Callaghan announced the establishment of the Commission on 24th June 1977. He stated:

> "There is a balance to be struck here between the interest of the whole community and the rights and liberties of the individual citizen. The Government consider that the time has come for the whole criminal process, from investigation to trial, to be reviewed with that fundamental balance in mind. This will be the central task of this Royal Commission." (Hansard W.A. Col.604)

The Commission in its report announced:

> "We have striven to produce a coherent and logically integrated set of arrangements, and one which displays an appropriate balance between individual rights and the community's interest, manifested in its fairness, openness and workability. In the light of the injunction in our terms of reference to take into account the need for the efficient and economical use of resources, we have also considered carefully the resource implications of our proposals." (Para. 10.1)

The report explained that by 'fairness, openness and workability' it meant:

"By fairness we mean that if a suspect has a right he should be made aware of it. He should be able to exercise it, if he wishes, and waive it, if he wishes. If the right is to be withheld from him he should know not only that it is being withheld but why it is. If he is to be required to submit to a particular investigative procedure, he should be told under what power the requirement is made and how it can be enforced if he refuses... Fairness applies equally to the police officer. He should not be required to try to work within a framework of rules which are unclear." (Para. 2.19)

"Openness relates not merely to the impact of procedures on the suspect but also the operation of the procedures as a whole. Decisions, to the extent that it is possible, should be explained to the suspect. They should also be written down, together with a narrative of the events while a person is in custody. They can then be available for the record, for inspection and, if need be, challenge by supervisory officers, by the suspect or his legal adviser, and by the courts." (Para. 2.20)

Workability: "Any rules to regulate investigation must be so framed that they enable the police to discharge their duty to ensure that the rights of the suspect are properly protected... Another aspect of workability has already been partly touched upon in the discussion of fairness. Police officers should not be required to operate with unclear and uncertain rules; the content of the rules should be examined against the objective they are intended to achieve. Moreover they should take account of the physical circumstances and the patterns of work and command in the environment in which they are to operate. The way the police work is determined by such factors as work demand, manpower availability, the shift system and the processes of accountability, and these condition the way in which they are able to respond to the constraints the legal rules place upon them." (Paras. 2.21 & 2.22)

2. <u>Philips Commission Recommendations and the Bill's Proposals</u>

The main recommendations in Part I of the Commission's Report include:

(1) <u>Rationalisation of stop and search powers</u>. "The miscellany of other existing powers should be replaced by a single provision allowing stop and search for stolen goods or any item the possession of which is prohibited in a publice place" (Para. 5.5). The Bill implements this proposal which was also endorsed by Lord Scarman in his report "The Brixton Disorders" (Cmnd. 8427). As Mr Mayhew put it:

"<u>Part I</u> deals with powers to stop persons and search them and their vehicles for stolen or prohibited articles, on reasonable grounds of suspicion. These are important preventive powers. Lord Scarman, in his Brixton report, said he was convinced that a power to stop and search was necessary to combat street crime. We agree. The power has existed in London for more than a century. But many other parts are without it. The safeguards imposed by the Bill - for example, the duty to tell the person what is being looked for, to record what took place - in the main reflect what is already good police practice." (Ibid.)

(ii) The Commission also dealt with warrants to enter and search premises which, it was concluded, should continue to be issued by magistrates although in certain cases with a new procedure for obtaining a warrant. The bill (in part II) sets out the circumstances in which the police may enter premises in order to execute an arrest warrant, restates in a statutory form the common law powers of entry already available to the police; provides the police with new powers to obtain evidence of serious arrestable offences. Magistrates will be empowered to issue warrants authorising the police to search premises for such evidence; provide a separate procedure for evidence held on a confidential basis by a third party. Under this procedure a circuit judge will be empowered to issue an order requiring the production of the evidence to the police or, exceptionally, a search warrant. It clarifies the power of the police to enter and search without a warrant the premises of a person arrested for an arrestable offence for evidence relating to that or connected offences; builds new checks into the search warrant procedure and states precisely the powers of the police to seize articles of evidential value found during the course of a lawful search.

Mr Mayhew commented:

"Fresh powers are urgently needed if the police are to be able to deal effectively with cases, particularly fraud, where it is now very difficult to get the evidence needed for a conviction. They will depend on the warrant of a single magistrate, acting on information given on oath, or on an order of a circuit judge in the case of information held on a basis of confidence." (Ibid.)

(iii) The Commission also called for the present powers of arrest to be put on a "consistent footing" (Para. 5.8). This the bill achieves by clarifying an unclear area of the law. (Part III)

(iv) Detention The Commission proposed various safeguards to protect a detained suspect. The bill introduces (in Part IV) a new statutory scheme making detention lawful only if specific detention conditions apply. These are similar to the criteria of the "necessity principle" outlined in Para. 3.76 of the Report. As recommended by the Commission (Para. 3.112) the bill proposes that a uniformed police officer at each police station be designated to have overall responsibility for people detained there and for their treatment under detention.

Period of Detention The bill departs somewhat from the Commission's recommendations on holding a suspect in detention without charge. Mr Walter Merricks, a solicitor and member of the Royal Commission, has made much of this point in an article in The Times (19th November 1982). Nevertheless, there is basic agreement between the Commission and the Bill that an individual should not normally be held in detention for more than 24 hours (Clause 32). In exceptional cases the bill proposes:

- detention beyond 24 hours and up to 48 hours will require the authority of a single magistrate, and beyond 48 hours the authority of a full magistrates' court;

- there would be an absolute limit on detention without charge of 96 hours;

- before authorising detention a magistrate or a magistrates' court would have to be satisfied that the offence under investigation was a serious case of an arrestable offence and that the relevant detention condition was satisfied.

(v) Treatment etc. of suspects Many of the recommendations of the Commission e.g. to put the power of search of arrested people on a statutory basis, are implemented in Part V of the bill. The bill entitles detained persons to have access to legal advice although in serious cases a delay of up to 48 hours may be permitted, subject to safeguards. Mr Mayhew summed up these provisions:

"How suspects are to be treated and questioned in such custody which is almost equally important, is dealt with in Parts V and VI... Parts V and VI either embody the rights of suspects in the Bill itself, or enable them to be set out in codes for which the Home Secretary will be responsible, breach of which by a police officer will be evidence of a disciplinary offence."

(vi) Right of Silence, voluntary confession Mr Mayhew stated:

"We are retaining what is often called the right to silence, and the principle that a confession statement must be voluntarily made if it is to be admissible in evidence. Part VII reflects this. By Clause 60 a confession statement must be excluded if the court is not satisfied that it was not obtained by oppression, or in other circumstances likely to make it unreliable. As at present, the prosecution carry the burden of establishing this, beyond reasonable doubt."

3. Police Complaints Procedure and Consultation

Part VIII of the Bill contains the most politically controversial proposals, those concerned with the investigation of complaints the police and those establishing arrangements "for obtaining the views of people [in each police area] about matters concerning the policing of the area and for obtaining their cooperation with the police in preventing crime in the area." (Clause 67).

(a) Police Complaints Procedure Lord Scarman called for an early introduction of an independent element in police complaints procedures and the establishment of a conciliation process. (The Brixton Disorders para. 7.28). Of the current legislative proposals the Home Secretary has said that they "Will substitute for the present uniform procedure a three-tier

system to operate according to the seriousness of the case ... relatively minor matters to be dealt with locally by informal resolution; more substantial complaints will be investigated and independently considered as at present; and the more serious complaints will be investigated by a senior police officer normally from an outside force, under the supervision of an independent element throughout the process of investigation. I believe that the new arrangements are important, and that they will help to reinforce good relationships between the police and the public." (Hansard 5th November 1982 Col.226).

(b) Background to the Government's Reforms of the Complaints Procedure Much attention has been directed to the system for monitoring complaints against the police. Some of the comment has been constructive; other observations have formed part of a concerted Left-wing campaign against the police.

In 1981 the Police Complaints Board dealt with 7348 cases involving 16,789 matters of complaint. In only 132 matters the force concerned had decided to prefer disciplinary charges; the Board recommended charges in a further 26 matters. Apart from formal disciplinary charges, 1,5526 matters of complaint (only about 9 per cent of the total) resulted in an officer being given suitable advice or a warning by a senior officer.

Review of Complaints System In a Report (Cmnd. 7966) covering its first three years of operation, the Police Complaints Board said (para. 46) that "allegations of violence which are denied are the most important factor which militates against good relations between police and public".

The Board made it clear that it believed "such wrong-doing to be exaggerated in the mind of the public". Nevertheless, it recommended new machinery for dealing with allegations of violence by the police. In response to this report the Home Secretary set up a working party under the chairmanship of Lord Plowden. The working party reported on 18th March 1981 that it could not agree with the Complaints Board's recommendation of a new central team of investigators to look into complaints of serious injury. It did, however, conclude that greater use should be made of the system of taking the investigating officer from a force other than the one against which complaint was made, and that either the DPP or the Chairman of the Complaints Board could have oversight of investigations of serious assaults.

Reform of the System Following a Report of the all-party Home Affairs Select Committee (1) the Government issued a White Paper (2) published in October endorsing its recommendations. This provided the basis for the current legislation.

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(1) Fourth Report 1981-82 HC98.
(2) Police Complaints Procedures Cmnd. 8681.

It is noteworthy that the Home Affairs Committee's Report was endorsed by 5 out of 7 Labour members and that a fully independent system was rejected by them. Mr Whitelaw said that the introduction of an independent element in the investigation of serious cases "will give additional reassurance to the public." (19th October 1982)

(c) Police Consultation In Para. 5.69 of his report, Lord Scarman recommended the establishment of a statutory framework for consultation between the police and local authorities. The Home Secretary has been keen to couch the present proposals in terms of the community's responsibility in supporting the police. He has stressed the need to introduce a requirement of a sufficiently general nature to avoid straitjacketing the police in their battle against crime. He said in a speech to the South Yorkshire Police Authority on 19th November 1982:

> "Policing with the consent of the community is a very old concept but it was seldom more relevant than it is today. There is, I believe, a growing realisation within the community - certainly among its leaders - that policing is not just for the police. However great the resources we put into policing - and we have put a great deal in over the past $3\frac{1}{2}$ years - we cannot expect the police to do the job alone. The community must share the responsibility, must be prepared to help its police. And I believe that will only come through greater communication between the police and those they serve, so that all interests in the community can make known their differing concerns and needs to the police, and in turn recognise the limitations on the powers of the police.
>
> Consultation will take many forms ... It is certainly not my intention, by introducing legislation on consultation machinery, to interfere with such arrangements or to impose an inflexible system. It is important that consultation machinery should meet local needs. Those needs will vary from place to place, and so will the actual arrangements."

4. Press welcome for the Bill The Times in its principal leader (19th November) said the bill "constitutes the first comprehensive and coherent attempt in England to define the balance between the powers of the police and the rights of the individual in a free society." It commented "The balance, on paper, seems right." Even the Guardian gave a guarded welcome (leader 4th November 1982): "The promised increase in the "stop and search" powers of the police is not the kind of sweeping surrender of civil liberties to the law and order lobby which some will instantly claim it to be ..."

5. Labour Party and the Left's Response

(a) Police Accountability. Labour's Programme 1982 stated:

"We will create elected police authorities with statutory responsibility for the determination of police policy. They, not the Chief Constable, will be given responsibility for the appointment, promotion and dismissal of senior police officers."

This proposal would jeopardise police independence and would potentially subject the police to political control by Left-wing authorities such as Mr Livingstone's regime at the GLC. By contrast, the Home Secretary has made clear that under a Conservative Government "there will be no political direction of the police in this country" (Party Conference, Blackpool, October 1981).

The Times (19th November 1982) reported that Miss Patricia Hewitt, general secretary of the N.C.C.L. had said: "It is deplorable that there is no role for the GLC or the London boroughs ... There is no duty on the police inside or outside London to take notice of what the police in that area tell them."

(b) Police Complaints Procedure Mr Roy Hattersley, Shadow Home Secretary, has been somewhat more vague in his proposals for reform than the official Labour's Programme 1982 - the latter stated: "The next Labour Government will replace the present procedure with a complaints system accountable to local communities with minority police representation" (page 37). This of course goes considerably further than the all-party Home Affairs Select Committee and concurs with suggestions of Mr Ken Livingstone. But Mr Hattersley, writing in The New Socialist (July/August 1982) was vaguer:

> "For the sake of the police themselves the system of independent complaints inquiry ought to be delayed no longer. No one pretends that it will be easy to organise. For it must allow an investigation that neither precludes eventual prosecution nor deprives the accused officer of his right to adequate defence. It must include an initial opportunity for trivial complaints to be redressed to the satisfaction of the complainant by conciliation rather than by lengthy interrogation and litigation. But, if the police are to re-establish the respect which is essential to their successful operation, the new complaints procedure must be speedily introduced."

(c) Labour's Response to the Royal Commission Report

In view of the fact that it was a Labour Government which set up the Royal Commission, Mr Hattersley's response to their Report was surprising. The Times reported him (13th January 1981) as attacking it saying: "To reject the intolerable cannot be an excuse for the undesirable". The Times reported his view that full implementation of the Commission's proposals would reduce rather than increase a suspected person's safeguards. However, in a debate on the

Report in the Commons on 20th November 1981, Mr Hattersley gave more measured response. He welcomed Part II of the Report while expressing reservations about Part I (with which the present bill is concerned). His summing up in that debate did not make matters clearer when he categorically stated:

> "I do not believe that the implementation of this report would improve that feeling of the public that the police are on their side... Many of the proposals are therefore not proposals that we could accept in the House or anywhere else."

Specifically Mr Hattersley rejected both the extension of police powers of arrest and the Report's proposals on detention for a 24 hour period.

Labour's Programme 1982 rejected the proposed extension of police stop and search powers.

(d) The Liberal Party Conference at Bournemouth on 23rd September 1982 passed a motion calling for "open, responsive and appropriate policing; decentralized control of police authorities, including the Metropolitan Police; a statutory duty to consult local councils and bodies; the disbanding of the Special Patrol Group; racist behaviour by police officers to be ordinarily punished by dismissal; and a ban on the use rubber and plastic bullets."

A motion was also carried calling for an "independent body to investigate complaints against the police" (Source The Times 24th September 1982).

The Times reported Mr John Alderson, Ex-Chief Constable of Devon and Cornwall and prospective Liberal candidate for the new constituency of Teighbridge as saying that a situation was developing in Britain: "with a powerful police force directed by the State to police one half of the community on behalf of the other, to repress and keep in their place the people the Victorians used to call the criminal classes, by which they have often meant the urban poor". He alluded to the "repressive, authoritarian police system."

The next day (25th September) The Times dismissed the Liberal Party's views on law and order saying that they had not "yet got a credible policy".

6. Stop Press: Scarman Response to the Bill Writing in The Times (25th November 1982) Lord Scarman acknowledged that improvements in police training, equipment etc. had led to a 'scene' which is "far better that it was a year ago". The article also acknowledged that the bill embodies his report's recommendations on police complaints and consultation procedures.

EGM/TK
25 November 198

With the Compliments
of

THE LORD ADVOCATE

28th October 1982

LORD ADVOCATE'S CHAMBERS
FIELDEN HOUSE
10 GREAT COLLEGE STREET
LONDON, SW1P 3SL

Telephone: Direct Line 01-212 0515
Switchboard 01-212 7676

CONFIDENTIAL

Home Affairs

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

Telephone: Direct Line 01-212 0515
Switchboard 01-212 7676

Rt. Hon. William Whitelaw CH, MC, MP.,
Secretary of State for the Home Department,
Home Office,
50 Queen Anne's Gate,
London SW1.

28th October 1982

GT
28/10

Dear Willie,

POWERS OF METROPOLITAN POLICE OFFICERS IN SCOTLAND

Thank you for copying to me your letter to George Younger of 12th October. attached

I agree that section 7 of the Metropolitan Police Act 1839 is an unsatisfactory basis for the argument that Metropolitan police officers concerned with the protection of Royalty in Scotland have police powers there. As you point out, there is a similar problem in relation to protection of other VIPs in Scotland by Metropolitan police officers. I agree that it is desirable to take the opportunity offered by the forthcoming Police and Criminal Evidence Bill (as I understand it is now to be called) to clarify the position along the lines which you propose.

I have seen Jim Prior's letter of 27th October and note, in attached particular, his reference to the need for Metropolitan officers in Northern Ireland to hold a firearm certificate. The position in Scotland is similar, and I agree that this point should be dealt with at the same time, if any action is necessary. It may be that it would be sufficient to give police powers to Metropolitan officers in Scotland and Northern Ireland, as they would then have the benefit of the exemption from holding a firearm certificate by virtue of section 54 of the Firearms Act 1968.

Copies of this letter go to the Prime Minister, members of H Committee, the Attorney General, First Parliamentary Counsel, and Sir Robert Armstrong.

Yours ever,

James.

CONFIDENTIAL

CONFIDENTIAL

Home Affairs

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

Rt Hon William Whitelaw CH MC MP
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

JB 27/10.

27 October 1982

Dear Secretary of State,

POWERS OF METROPOLITAN POLICE OFFICERS attached

Thank you for your letter of 12 October. I fully agree that the position needs to be clarified and I am generally content with what you propose.

There are, however, two further points which, in my view, should be pursued in the context of the Police and Criminal Procedure Bill. The first relates directly to the proposal which we both support to give members of the Metropolitan Police powers when they are undertaking protection duties in Northern Ireland. I understand that under Section 54 of the Firearms Act 1968, Metropolitan officers are not empowered to possess a firearm without a certificate in Northern Ireland. I think it would be sensible to include a provision in the Bill allowing these officers on protection duty to carry firearms without a certificate in the Province; this would greatly simplify the existing procedure and would obviate the need for a certificate or other form of authority to be issued.

The second point concerns the powers of RUC officers in Great Britain. It sometimes falls to them to protect people or property in Great Britain, or when travelling here. Those who testify against terrorists and need police protection are one such category; another could be members of the Assembly. I agree with the RUC view that the powers you envisage should be reciprocal, so that their officers on defined duties in Great Britain could have the powers of a constable within that jurisdiction and should be entitled to carry a firearm without a certificate. This would be logical and sensible: gaps in the powers in this area ought, in my view, to be plugged as soon as possible.

I should be grateful if your officials, in conjunction with mine, could look at these two points. Subject to this, I agree with what you propose.

Copies of/...

CONFIDENTIAL

Copies of this letter go to the Prime Minister, members of H Committee, First Parliamentary Counsel, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely

pp JAMES PRIOR

(Signed on behalf of the Secretary of State in his absence)

KW

HOUSE OF LORDS,
SW1A 0PW

With the
Lord Chancellor's Compliments

CONFIDENTIAL

HOUSE OF LORDS,
SW1A 0PW

19 October 1982

My dear Willie:

POWERS OF METROPOLITAN POLICE OFFICERS IN SCOTLAND

TPM Thank you for copying to me your letter to George Younger of 12 October.

I fully agree with you that, now that this lacuna in the existing law has been discovered, it can no longer be acceptable for Metropolitan police officers to accompany members of the Royal Family or Ministers to Scotland without the necessary powers. I had hoped that it might be possible to solve the problem administratively, by appointing these officers to be temporary members of the Scottish police as and when necessary. I am told, however, that this is a solution which your officials have explored, but which has been found to be impracticable for a number of reasons. In the circumstances I am content to support your proposal that the necessary powers should be included in the forthcoming Police and Criminal Procedure Bill.

I am copying this letter to the recipients of yours.

Yrs:

The Right Honourable
William Whitelaw MC MP
Secretary of State for the
Home Department
Home Office
Queen Anne's Gate
LONDON
SW1

CONFIDENTIAL

Home Affairs : Powers of Attorney

Home Affairs: Review of entry
Pt 2 with RTB 12/10

cc J.V.

DEPARTMENT OF ENERGY
THAMES HOUSE SOUTH
MILLBANK
LONDON SW1P 4QJ
Direct Line 01-211 3390
Switchboard 01-211 3000

PARLIAMENTARY UNDER
SECRETARY OF STATE

Tom Cassidy Esq
Private Secretary to
John MacGregor Esq MP
Parliamentary Under Secretary of State
Department of Industry
Ashdown House
123 Victoria Street
LONDON

13/10

12 October 1982

Dear Tom

POWERS OF ENTRY

can right Pt 1

In Willis' letter of 9 March to Neil Hoyle (PS/Kenneth Clarke, Department of Transport) he asked to be kept informed of any departures by Departments from the changes to the Nationalised Industries powers of entry recommended in Mr Mitchell's report to the Prime Minister of 1 August 1980.

We are proceeding with the repeal of Sections 52 and 54(2) of the Schedule to the Electric Lighting (Clauses) Act 1899 in our forthcoming Electricity and Nuclear Installations (Amendment) Bill. However, Parliamentary Counsel has drawn to our attention difficulties in effecting the amalgamations we had also proposed in respect of the electricity supply industry. These were:

(i) powers to enter premises to inspect (among other things) electric lines and meters; (S24 of the Electric Lighting Act 1882) with S56 of the Schedule to the Electric Lighting (Clauses) Act 1899 providing for entry to remove, test and inspect

(ii) powers to enter land to replace, repair and alter electricity lines (S12 of the 1882 Act which incorporates certain sections of the Gas Works Clauses Act 1847) with S22 of the Electricity (Supply) Act 1919 which lays down the code governing the granting of wayleaves to the electricity supply industry.

Parliamentary Counsel pointed out that each of the powers proposed to be amalgamated form part of a particular code of law dealing with a discreet matter and are presently in the right place. It would therefore be difficult to justify amalgamating these powers except as part of a major re-organisation of the Electricity Acts - which our Bill is not. In addition the exercise would be artificial unless the amalgamated powers were different from the existing powers, but that was not intended. Indeed in practice it would be difficult to amalgamate without slightly widening the powers. We have therefore decided not to proceed with the amalgamations.

Secondly, we have been considering introducing a clause into the Electricity and Nuclear Installations (Amendment) Bill to modify the Powers of Entry in Section 5 of the Atomic Energy Act 1946. This modification was also included in the list announced by Mr MacGregor in March 1981. In considering this provision, our Ministers have reached the conclusion that there would be serious disadvantages in including a clause of that kind in the Bill. The nuclear part of the Bill is specifically about third party liability for nuclear accidents, but the debate will probably range widely over nuclear safety. That is no problem but our Ministers do not want the debate to range over nuclear security as well. The proposed modifications to Section 5 of the Atomic Energy Act 1946 would inevitably give rise to debate on civil liberties, the police state, and nuclear terrorism. We do not want those emotive subjects raised, especially at a time when the Sizewell Public Inquiry is about to begin.

In reaching that view, our Ministers have also concluded that there is in fact no advantage to the Government in modifying this residual Power of Entry. It is not a Power of Entry into the sort of business premises that the Prime Minister had in mind when this exercise was drawn up. There is no body of Inspectors that has these powers of entry, nor indeed is anyone at present authorised by the Secretary of State to use them. The power itself has never been exercised, and there have never been any complaints about the existence of this power of entry from businessmen or anyone else; and modifying it would merely draw attention to its existence which we still wish to retain as a residual power because of our commitment to International Safeguards on nuclear materials. There is therefore no advantage in modifying Section 5, and our Ministers have asked that we should not proceed with amending legislation.

I am copying this letter to Mike Pattison at No 10, PS/Mr Fletcher Scottish Office and PS/Mr Patton Northern Ireland Office.

Yours sincerely

Christine Spurway

C F SPURWAY
Private Secretary

Home Affairs

Home Affairs Private Secretary

CONFIDENTIAL

Prime Minister
Presumably, we need this amendment to cover your protection officers on tours to Scotland and Northern Ireland. FERB 13.10

2

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

12 October 1982

Dear George

POWERS OF METROPOLITAN POLICE OFFICERS IN SCOTLAND

The work following Fagan's entry to Buckingham Palace on 9 July has revealed a doubt about the powers of Metropolitan police officers on duty in Scotland and Northern Ireland which I should like to put right in the forthcoming Police and Criminal Procedure Bill.

Uniformed Metropolitan police officers regularly serve in Scotland when The Queen and other members of the Royal Family are living at Holyroodhouse, Balmoral and elsewhere. In addition Metropolitan police officers accompany members of the Royal Family and other VIPs, including Ministers, when they visit Scotland and Northern Ireland as they do during visits elsewhere in England and Wales. The only exception for Northern Ireland is the Secretary of State who, following a recent change, is not accompanied in the Province by his Metropolitan police protection officers. The issue of police powers for Metropolitan officers in Scotland and Northern Ireland seems never to have been considered in modern times but there had been a casual, and it now seems misguided, assumption that police powers were provided for the officers concerned with protecting Royal residences by section 7 of the Metropolitan Police Act 1839 which refers to Royal Palaces and "ten miles thereof". In brief the problem is that section 7 probably does not extend to Scotland and certainly does not apply to residences other than Royal Palaces.

Now that the doubt exists it would not be acceptable to the police to leave matters as they are and there is no prospect of avoiding the problem by arranging that Metropolitan police officers should no longer be sent on duty to Scotland and Northern Ireland. Any other arrangements would be less effective and much more expensive. I propose, therefore, to include in next Session's Bill a provision to give constabulary powers to a Metropolitan police officer assigned by or an behalf of the Commissioner of Police of the Metropolis to the protection of any person or property in Scotland or Northern Ireland while he is on duty. Subject to confirmation by the lawyers that there would be no unintended effects, section 7 of the 1839 Act would be repealed.

The Rt. Hon. George Younger, M.P.

/cont .....

CONFIDENTIAL

I expect this proposal to be welcomed generally by the police and because it is drawn as narrowly as possible to increase the effectiveness of very long-standing arrangements it should not be controversial in the House of Commons.

In order to include the provision before introduction if possible, it would be helpful to know by 26 October whether you and other colleagues are content. Perhaps I could assume that there will be no comments from any colleague who has not replied by then or told me that he intends to reply.

I am copying this letter to the Prime Minister, members of H Committee, First Parliamentary Counsel, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Home Affairs, Rights of Entry, Pt 2

13 OCT 1982

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

11/10

The Rt Hon William Whitelaw CH MC MP
Secretary of State for the
Home Department
Home Office
Queen Anne's Gate
LONDON SW1H 9AT

11 October 1982

Dear Willie

POLICE COMPLAINTS PROCEDURES: WHITE PAPER IN RESPONSE TO THE HOME AFFAIRS COMMITTEE'S REPORT

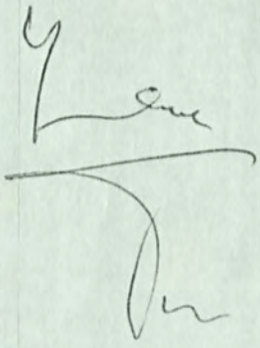
George Younger, in his letter of 30 September to you, has suggested a form of words which would be inserted in the forthcoming White Paper to cover the implications for Scottish procedures. Although I did not think it was necessary to make any mention of Northern Ireland in the White Paper as you circulated it on 21 September, I consider some mention should be made of Northern Ireland if there is to be a reference to Scotland. My officials have therefore been in contact with yours and have suggested an amendment to the paragraph which George Younger circulated. As amended it would read:

> "As regards procedures in Scotland and Northern Ireland, the Government has noted that the Committee directed their investigation merely to procedures in England and Wales and the Committee's main recommendations are not directly applicable to the systems in Scotland and Northern Ireland. The Government has, however, considered the implications for Scottish procedures of those recommendations which are relevant to Scotland, and the Secretary of State for Scotland is publishing a consultation note inviting the views of interested bodies on the Government's preliminary conclusions on the matters. As far as Northern Ireland is concerned, the Secretary of State for Northern Ireland will be considering, in consultation with interested parties, whether and how the proposals contained in this White Paper might be introduced in Northern Ireland."

/...

Unless I hear to the contrary I shall assume that you and other recipients are content with this amendment.

I am sending a copy of this letter to the Prime Minister, H Committee colleagues and Sir Robert Armstrong.



Home Affairs

Review of rights of entry

Home Affairs

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

The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

30 September 1982

Dear Willie,

POLICE COMPLAINTS PROCEDURES: WHITE PAPER IN RESPONSE TO THE HOME AFFAIRS COMMITTEE'S REPORT

Thank you for sending me a copy of your letter of ~~21~~ September to Michael Havers in which you sought comments on the text of the White Paper on this matter. I have no comments of substance to suggest on the text of the paper, but I think it is important that it should make the point more clearly that both the Home Affairs Committee's report and the White Paper relate only to procedures in England and Wales. I suggest below a paragraph for inclusion between paragraphs 2 and 3 in the text.

As you know, the Committee took evidence from my Department, and from other Scottish bodies. In their report they said that, if they could be certain of the establishment in the near future of a Crown Prosecutor system in England and Wales modelled on the Procurator Fiscal system here, they would not find it necessary to suggest major alterations in police complaints procedures in the meanwhile. Nevertheless, we made it clear in our evidence that we were ready to consider, against the background of the existing system in Scotland and the extent to which it meets the needs of Scottish circumstances, whether any changes to that system were necessary in the light of the recommendations in the Scarman Report and those resulting from the work of the Committee. In these circumstances, I propose to issue a consultation note to interested bodies in Scotland setting out my preliminary conclusions on those of the recommendations by the Committee which appear to be relevant to Scottish procedures. Your officials have seen a draft of this consultation note, and we are at present considering whether it needs adjustment in the light of your White Paper. I do not think that I need trouble Ministerial colleagues with its text, but I shall arrange for my officials to co-ordinate its publication with that of the White Paper.

Against this background, I should be grateful if a new paragraph were inserted in the White Paper after paragraph 2 as follows:-

> "As regards procedures in Scotland, the Government has noted that the Committee directed their investigation mainly to procedures in England and Wales and that the Committee's main recommendations are not directly applicable to the different system in Scotland. The Government has, however,

considered the implications for Scottish procedures of those recommendations which are relevant to Scotland, and the Secretary of State for Scotland is publishing a consultation note inviting the views of interested bodies on the Government's preliminary conclusions on these matters".

I am sending a copy of this letter to the Prime Minister, H Committee colleagues and Sir Robert Armstrong.

Yours ever,

George

FICE SW

H A Hains

10 DOWNING STREET

From the Private Secretary

30 September, 1982

The Prime Minister has now seen the Home Secretary's letter of 21 September to the Attorney General enclosing a draft White Paper in response to the Home Affairs Committee's Report on Police Complaints Procedures. This is just to record that the Prime Minister has no comments on the draft.

TIMOTHY FLESHER

Colin Walters, Esq.,
Home Office

Home Affairs

ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

24 September 1982

The Rt Hon William Whitelaw CH MC MP
Secretary of State for the Home Department
Home Office
LONDON S W 1

24/9

Dear Willie,

POLICE COMPLAINTS PROCEDURES : WHITE PAPER IN RESPONSE TO THE HOME AFFAIRS COMMITTEE'S REPORT

Thank you for your letter of 21 September enclosing a draft of the White Paper. I have no comments on this.

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

Yours ever,
Michael.

Home Affairs, Rights of Entry

Pt 2

QUEEN ANNE'S GATE LONDON SWIH 9AT

21 September 1092

MR

Prime Minister
To be aware
21/9

Dear Michael

POLICE COMPLAINTS PROCEDURES: WHITE PAPER IN RESPONSE TO THE HOME AFFAIRS COMMITTEE'S REPORT

On 29 June H Committee approved (H(82)11th meeting) the proposals in my memorandum (H(32)80) for legislation on police complaints procedures and their announcement in the form of a White Paper in response to the report of the Select Committee on Home Affairs (HC 98-I). The memorandum undertook to clear the text of the White Paper by correspondence in the normal way. Accordingly, I enclose a draft.

As you will see, the legislative proposals are described in Annex A in substantially the same form as they were put to H Committee, except for the revised arrangements subsequently agreed giving the assessor the reserve power to call in a case (paragraph 18 of Annex A). The text places considerable emphasis on the role and standing of the independent assessor. I regard this as important presentationally, particularly against the background of recent allegations of police corruption and obstruction.

I propose to arrange publication of the White Paper for the week beginning 18 October. This will allow a reasonable time between its appearance and the introduction of the legislation it promises in the Police and Criminal Procedure Bill early in the new Session.

I am sending a copy of this letter to the Prime Minister, to H Committee colleagues and to Sir Robert Armstrong. In order to meet the proposed timetable for publication of the White Paper, I should be grateful for any comments you may have by 30 September.

Yours

Leon

The Rt. Hon. Sir Michael Havers, QC., MP.

GOVERNMENT REPLY TO THE FOURTH REPORT FROM
THE HOME AFFAIRS COMMITTEE (SESSION 1981-82 HC98-I)

POLICE COMPLAINTS PROCEDURES

1. The Government welcomes this report which draws together and builds on the debate generated by the reports of the Police Complaints Board's Triennial Review, published in July 1980 (Cmnd 7966), the Plowden Working Party, published in March 1981 (Cmnd 8193), the Police Advisory Board Working Group, reproduced at Volume II, pages 223-230, and the Scarman Inquiry, published in November 1981 (Cmnd 8427). It notes especially the Committee's majority support for reform of the complaints system, pending any major change in prosecution arrangements generally, along the lines recommended in evidence given by the Home Office (Vol II, pages 205-249).

2. The Government announced, in responding to the Scarman Report, its intention to bring forward as soon as possible proposals for the reform of police complaints procedures in England and Wales. When, shortly afterwards, the Committee decided to inquire into the subject the Government thought it right to wait to have the benefit of the Committee's report before proceeding further. Accordingly, the report has been taken fully into account in the formulation of the Government's proposals for new arrangements for handling complaints against the police. These proposals are described at Annex A to this White Paper. The legislation necessary to give them effect will be brought before Parliament at the earliest opportunity.

3. The most important proposal is for the introduction of an independent assessor for serious complaints, at the investigation stage. This is in addition to the independent elements provided by the Director of Public Prosecutions and the Police Complaints Board in the consideration of the outcome of complaints

/investigations .....

investigations. The assessor's function will be to ensure that investigations carried out under his supervision are conducted expeditiously, thoroughly and impartially. He will have the necessary powers for this purpose and will be actively involved from the appointment of the investigating officer right through the investigation to its completion. Only when he has signified his satisfaction with the investigation will decisions be made on what action, if any, should be taken. Under the arrangements described, in any case not referred to the assessor he will be able, in effect, to call it in and determine whether by reason of the gravity of the allegation or other exceptional circumstances it should be investigated under his supervision. The proposal thus provides for the assessor's involvement in complaints alleging serious injury or other serious assault and serious corruption cases. Such responsibilities will require the assessor to be a person of standing and independent judgement who can command the confidence of the police and public alike. This is reflected in the proposal that he should be the Chairman of the Police Complaints Board or a Deputy Chairman appointed for the purpose (paragraph 25 of Annex A). The Government does not regard the establishment of the assessor as any reflection on the general quality of police investigation of complaints, on which the Police Complaints Board have said that it is satisfied that in the vast majority of cases which come before the Board a thorough and fair investigation has been made. It is designed to provide further reassurance to the public in those few cases, small in number but a cause of public anxiety, where serious allegations are made against police officers, that everything possible is done to arrive at the truth.

4. Additionally, the Government's three-tier approach, as summarised at paragraph 2 of Annex A, is intended to create a more flexible system than now exists. For example, the informal resolution procedure is designed to render less cumbersome and bureaucratic the arrangements for dealing with minor complaints

/and to .....

nd to make the system more responsive to the complainant. At the same time the Government remains clear that the primary responsibility for the maintenance of discipline within his force should remain in the hands of the chief officer, and it therefore welcomes the Committee's strong support for this principle (paragraph 54 of report). In addition, the Government considers that, subject to the important caveat entered by the Committee at paragraph 50 of the report, there can be no question of seeking greater acceptance of complaints procedures at the cost of sacrificing the legitimate rights of police officers. Confidence in the complaints system is an important aspect of the relationship between the police and public generally; but it is necessary for both parties to the relationship if the system is to work satisfactorily. The Government believes that its proposals fairly reflect the proper interests of all parties and that the proposals deserve therefore to command their confidence.

5. The Government's views on the Committee's individual recommendations are set out in the following paragraphs.

Recommendation (i)

> Steps should be taken to identify categories of minor criminal offence which could normally be referred to the Police Complaints Board rather than the Director of Public Prosecutions, subject always to the discretion of the Board to submit the case to the DPP where necessary (paragraph 11).

6. The Government's acceptance of the spirit of this recommendation is reflected in the proposed new arrangements described in paragraphs 13 and 14 of Annex A. It is not thought appropriate to seek to specify by legislation allegations of criminal offences that might be considered without reference to the Director of Public Prosecutions by listing them or by indicating a level of seriousness in terms of maximum penalty. This is because the offence categories themselves are too wide to permit proper discrimination between widely varying individual circumstances. In some cases the nature of the conduct alleged within the compass of a specific criminal offence may merit referral to the DPP and in others it may not. Accordingly, the Government's proposal is that discretion should rest with

/the chief .....

the chief officer, operating with regard to guidance issued by the Home Secretary and subject always to the safeguard, as recommended by the Committee, that the Police Complaints Board would be empowered to direct that the papers be submitted to the Director.

Recommendation (ii)

> The Home Office guidelines relating to the double jeopardy rule should be revised both to clarify the position of Chief Constables and the PCB and to ensure that there is no diminution of their statutory power to take disciplinary action, if necessary, even where the DPP has decided against prosecution (paragraph 15).

7. The Government agrees that existing guidance to chief officers should be clarified. The changes proposed at paragraphs 13 and 14 of Annex A will in any event necessitate reformulation of the guidance. There are matters pending before the courts the outcome of which may also have to be taken into account. As was pointed out in evidence given to the Committee by the Home Office (Vol II, pages 215-217), guidance in terms similar to that now applying pre-dates section 11 of the Police Act 1976 and raises wider considerations. The Government regards it as right, in principle, that in respect of the same events a police officer should not be liable to be proceeded against both in respect of a criminal offence and for a like offence under the discipline code. But this should not mean that he cannot be dealt with for a disciplinary offence where prosecution for a criminal offence which is of a different nature has already been considered.

Recommendation (iii)

> Where a complainant is the subject of prosecution or has been convicted, all statements taken during the course of the investigation of his complaint, appropriately edited on grounds of security, should be forwarded to the complainant's legal adviser (paragraph 16).

8. The Government acknowledges the concern which led the Committee to make this recommendation. The Committee recommended similarly in relation to inquests at paragraph 30 of its report on deaths in police custody (1980, HC 631). The reply

/given on .....

given on that occasion (in answer to a Question in the House of Commons on 11 November 1980, Vol 992 cols 150-2) applies in effect also to the present recommendation. It is a principle of long standing and of universal application endorsed by successive governments that the reports of police investigations are confidential and should not be disclosed. It is in the interests of justice to do all that is reasonable to ensure public co-operation and this would be jeopardised if confidentiality could not be held out to those invited to make statements. No degree of editing, whether on security or other grounds, would be capable of overcoming this fundamental difficulty. Whilst noting that this is a matter to which the Committee may wish to return as a result of its inquiry into Home Office procedures for the investigation of possible miscarriages of justice, and subject to any further fresh considerations the Committee advances in that context, the Government thinks it would not be right as a matter of public policy to accept this recommendation.

Recommendation (iv)

> The DPP, and likewise any independent assessor of complaints, should make it their normal practice to supply a complainant with at least a summary of the considerations which led to their decisions (paragraphs 18)

9. This recommendation raises considerations which include those discussed in paragraph 8 above. It repeats one made by the Committee at paragraph 38 of its reports on deaths in police custody. That recommendation was not accepted, for the reasons indicated below. The Government recognises, however, the likely benefit to public confidence in the complaints system of improved understanding of the way in which the function of the Director of Public Prosecutions is exercised. Accordingly, the Director's letter to complainants will in future include a general account of the factors which affect his decisions; the necessary arrangements are being introduced as soon as possible. It would not be right for the Director to go further and to give in each case detailed reasons for the decision he has reached. The Director works under the general superintendence of

/the Attorney .....

e Attorney General and if there is criticism of the way in which the Director has performed his duties that is a matter for the Attorney General to answer in the House of Commons. It is quite exceptional for the Attorney General to give a detailed explanation of why the Director has taken a particular decision in relation to a prosecution. The House of Commons has accepted that in the ordinary case the proper course is for the Attorney General to consider the complaint and to inform the House whether or not he is satisfied that the Director has considered the case on the proper basis. To give a detailed explanation would often lead to a prolonged and public controversy which would be grossly unfair to the person accused of crime, who would be deprived of the protection that a defendant has in criminal proceedings. As with recommendation (iii), there is the additional danger, which has been recognised by the courts, that some persons able to assist the investigation of crime would be unwilling to do so if the substance of their evidence was not afforded confidentiality. The same principles must apply whether or not the alleged offender is a police officer.

10. The recommendation is also applied to the independent assessor. Under the scheme described at paragraphs 15-25 of Annex A it will be for the assessor to satisfy himself that the investigation has been carried out to the required standards and, when he is so satisfied, to certify accordingly. He will not, therefore, normally be in the position of explaining his decisions to complainants in individual cases though he will no doubt wish to take suitable measures to promote public understanding of his role generally.

Recommendation (v)

> The explanatory leaflet entitled "Police and public - complaints against the police" should specify the various alternative methods open to members of the public wishing to lodge complaints against the police (paragraph 22).

/11. This .....

11. This recommendation is accepted and is reflected in paragraph 3 of Annex A. The 'Police and public' leaflet will require substantial amendment in the light of the proposed legislation and information about the various methods of making a complaint will be incorporated.

Recommendation (vi)

> Chief Officers of Police should take steps to ensure that it becomes standard practice within their own forces to provide the fullest possible explanation of the manner in which disciplinary complaints are dealt with (paragraph 24).

12. The Government has consulted the Association of Chief Police Officers of England, Wales and Northern Ireland who endorse this recommendation and say that it generally represents current practice. Revised guidance to chief officers will give further emphasis to this point.

Recommendation (vii)

> The Committee support the proposals of the Royal Commission on Criminal Procedure for the introduction of a Crown Prosecutor system to cover every police force area, and consider that such a system, modelled on the Procurators Fiscal, would provide the most promising framework for the investigation of complaints against the police (paragraphs 39 and 42).

13. The Committee's views are noted. The Government's position on the recommendations on prosecution arrangements made by the Royal Commission on Criminal Procedure was set out by the Home Secretary in reply to a Parliamentary Question on 27 July. A copy of the reply is at Annex B to this White Paper. If, as a result of the further examination described, major changes are made in the present arrangement there will, of course, be implications for the complaints system. As the Committee recognised, however, the issues considered by the Royal Commission go far wider than those arising in the context of complaints against the police.

/The Committee .....

Recommendation (viii)

> The Committee are not convinced that an independent organisation would do a more effective job than senior police officers in the actual investigation of complaints (paragraph 55).

Recommendation (ix)

> If the police are to retain their present role as investigators, it is vital that the external safeguards necessary to ensure that they do not abuse such a role should command the confidence of public and police alike. The key to success of any procedure for the handling of complaints alleging serious criminal offences must lie in the credibility and effectiveness of the independent assessor or supervisor responsible for overseeing their investigation by the police (paragraphs 55-6).

14. These recommendations are accepted. The Government believes it is right that the police should continue to be responsible for the investigation of complaints. It welcomes the Committee's recognition of the importance of the role of the independent assessor.

Recommendation (x)

> A complaints office, headed by an independent assessor, should be established in every region and every major metropolitan area. Any complaint alleging a serious criminal offence should be reported by the police at the earliest opportunity to the complaints officer, who from that point onwards would assume overall responsibility (paragraphs 57-8).

Recommendation (xi)

> A local complaints officer could also provide a convenient point of contact for members of the public who have reason to feel concerned about the handling of minor or disciplinary complaints (paragraph 60).

15. The Government agrees that there is merit in appointing assistant assessors on a regional basis; this is reflected in paragraph 25 of Annex A. It hopes, however, that its reluctance to establish a full network of regional offices from the outset will be accepted. It seems better that the possible development of a comprehensive regional presence should be examined in the light of practical experience of the operation of the scheme.

/16. With regard ....

16. With regard to the category of cases to be considered by the assessor, the Government does not accept that he should automatically assume responsibility for any complaint alleging a serious offence. Apart from the problems of definition of the concept for the purposes of legislation, this would be to determine handling by reference only to the precise nature of the complaint. That might, on the one hand, serve as an encouragement to complainants to express themselves in such a way as to ensure consideration of their complaint by the assessor and, on the other hand, have the effect of excluding cases where the allegation did not amount to one of serious crime but where other considerations, for example, of scale or the rank of the officer concerned, pointed to the need for investigation under the assessor. The Government is confident that the chief officer's discretion to refer a case to the assessor will be properly exercised, and the assessor's reserve power to call in a case (paragraph 20 of Annex) offers public reassurance on this score. Under these arrangements it follows that discretion should rest with the assessor to decide whether a case referred to, or called in by, him is one that should be dealt with under his supervision.

Recommendation (xii)

> Provision should be made for complaints not involving criminal allegations to be settled by conciliation between the complainant and the police. The local complaints office could have a useful role either as an independent arbitrator where the complainant required a second opinion about the advisability of conciliation, or possibly as a source of suitable qualified lay persons who might be made available to support the complainant in his original approach to the police station (paragraphs 63-4).

17. The Government welcomes the Committee's endorsement of a conciliation process between the complainant and the police in respect of minor complaints. Its legislative proposals on this aspect are set out at paragraphs 5-10 of Annex A. While accepting that such a procedure would not normally be appropriate where the allegation is that a criminal offence has been committed, the Government considers that conciliation need not be ruled out in relation to what are in fact

/minor matters .....

minor matters notwithstanding that they could formally be classified as crimes. Thus a complaint about the use of bad language, which could amount to a criminal offence, might be dealt with by conciliation where in the particular circumstances police management was satisfied this was appropriate and it accorded with the complainant's wishes. As already indicated, the Government's proposals do not include the provision of local complaints offices but alternative arrangements are envisaged for a lay presence where this seems likely to be helpful (Annex A, paragraph 8).

18. The Government's general approach is to provide for the informal resolution of minor complaints by conciliation, and not by arbitration; the latter process implies structured procedures which if resorted to would suggest that the complaint required formal investigation and independent consideration of the outcome. Its proposals are seen to be wholly consistent, therefore, with the Committee's desire that every part of the system should be administered with the greatest possible flexibility and that disproportionate time and energy should not be wasted in the formal consideration of cases which could be dealt with more simply and satisfyingly in other ways (paragraph 63 of report).

Recommendation (xiii)

> Each police authority should re-examine the way in which it discharges its statutory duties in relation to complaints procedures (paragraph 68).

19. The Government have consulted the Association of County Councils and the Association of Metropolitan Authorities, who represent the interests of police authorities. /The Associations endorse this recommendation/.

THE GOVERNMENT'S PROPOSED NEW ARRANGEMENTS FOR HANDLING COMPLAINTS AGAINST THE POLICE

PRESENT SYSTEM

The effect of the existing legislation is that every complaint by a member of the public against a member of a police force, unless withdrawn or not proceeded with by the complainant, has to be investigated by a senior police officer whose report receives independent consideration. Where there is an allegation of criminal conduct the report of the investigation must be sent to the Director of Public Prosecutions (DPP) who advises whether the officer should be charged with a criminal offence. After any reference to the DPP the report is submitted to the Police Complaints Board (PCB) for their consideration of the disciplinary aspects. A more detailed account of present arrangements is at the Appendix.

THE PROPOSED NEW THREE-TIER APPROACH

2. It is proposed to substitute for the present uniform arrangements a three-tier system to operate according to the seriousness of the case. It would allow relatively minor matters to be dealt with locally by informal resolution and, in the most serious complaints, would provide for an independent element in the process of investigation. Thus:-

(a) less serious complaints would be subject to an informal procedure, including an element of conciliation;

(b) more substantial complaints and those where informal resolution could not be achieved would be investigated and independently considered by the PCB, although complaints involving crime would no longer be automatically referred to the DPP;

(c) the most serious complaints would be subject to investigation by a senior police officer normally, but not exclusively, from an outside force under the supervision of an independent assessor.

The details of the scheme are set out below.

RECEIPT OF COMPLAINTS

3. Although the chief officer of police would remain the receiving point for complaints and no action could start until a complaint was brought to a force's attention, a complaint could

/be....

be lodged either by the complainant or by any person on his behalf, orally or in writing. Thus, it would be open to a complainant to go, for example, to a citizen's advice bureau or community relations officer and for them to forward the complaint to the police.

4. On receipt of a complaint against a member of his force the chief officer would cause it to be recorded and to have made such preliminary inquiries as were necessary to decide whether the matter should be handled initially by informal resolution or by formal investigation and, if the latter, whether the independent assessor should be involved. He may also need to initiate immediate local action e.g. in order to preserve evidence.

5. Informal resolution would not be an option where the complaint alleged:-

(a) a criminal offence with which the officer had not been charged and which would either require reference of the report to the DPP or which in the opinion of the chief officer merited criminal proceedings without such reference (see paragraphs 13-15 below); or

(b) conduct which, if supporting evidence were forthcoming, would be likely to result in the officer in practice being charged with an offence against the Police Discipline Code.

INFORMAL RESOLUTION

6. The complainant would be seen (unless this were impracticable) by a supervisory officer of a rank not less than Inspector who would explain that, subject to paragraph 5 above, the matter could be dealt with, according to the complainant's wishes, either informally or by investigation by a senior police officer and reference to the DPP and PCB, as appropriate, for independent consideration of the outcome.

7. Where informality was preferred the supervisory officer would make such arrangements as he considered appropriate for this purpose. It would be open to him to resolve the matter in such a way as proved acceptable to the complainant. The outcome would be recorded by the police in a register available for inspection by the police authority and HM Inspector of Constabulary and from which it would be open to a complainant to ask for a copy

/of the...

of the record of the entry for his complaint at any time within 3 months of its outcome being entered in the register. No entry of any kind relating to either attempted or successful informal resolution would be made in the personal record of an officer.

8. The arrangements made for the informal resolution process might include, at the supervisory officer's discretion, a meeting attended by a lay person where the complainant so wished. No officer could be compelled to attend such a meeting if he did not so wish. The function of the lay person would be to represent a non-police presence in support of the conciliation process and to assist in arriving at a conclusion in accordance with paragraph 7 above. The lay person could be drawn from a panel of people, perhaps maintained by the police authority for this purpose; he or she would have had no previous connection with the complainant or interest in the case.

Mutual protection of police officer and complainant

9. In order to preserve the informality of the procedure and encourage a co-operative and forthcoming spirit, it would be necessary to ensure that both the police officer and the complainant felt they could enter conciliation without running avoidable personal risks. Accordingly, provided no material change of circumstance occurred as envisaged in paragraph 12 below, no reference would be allowed in any subsequent disciplinary or criminal proceedings to what an officer said or did in the conciliation process, and any statement by him made in the course of preliminary enquiries or for conciliation purposes would not be admissible. That is to say, any proceedings could normally be based only on statements made to the officer appointed to conduct a formal investigation. Nor would anything said or done in the course of informal resolution be admissible in any subsequent civil proceedings by the complainant. By the same token there would be no arrangements for a copy of the complaint to be available to the officer concerned.

Oversight

10. Whilst the PCB's locus would continue to be confined to where a complaint was dealt with by formal investigation, the present requirement for police authorities and Inspectors of

/Constabulary....

Constabulary to keep themselves informed as to the manner in which complaints are dealt with by chief officers (section 50 of the Police Act 1964) would be developed. Thus, both could be required, for example, to inform themselves also about how the system of informal resolution worked in practice and to encourage resort to that system so far as possible. In addition, Inspectors could be charged with identifying good practice generally, disseminating knowledge of it through the service and, with police authorities, encouraging its adoption, ultimately by inclusion in guidance issued by the Home Secretary. No amendment of the existing legislation would be necessary for this purpose.

FORMAL INVESTIGATION AND INDEPENDENT CONSIDERATION

11. Where a complaint could not be resolved informally to his or the complainant's satisfaction or was of a nature described in paragraph 5 above the chief officer would be required to cause it to be investigated by a senior officer* from a different division or from another force, appointed for the purpose, as now. This would be subject to the grant of any dispensation by the PCB from the requirements in respect of complaints which were anonynous, repetitious or otherwise incapable of investigation, as presently provided by Regulation 4 of the Police (Withdrawn, Anonymous Etc Complaints) Regulations 1977.

12. Where in the course of attempted conciliation information came to light which brought the complaint within paragraph 5 above the process would cease and the complaint would be referred for formal investigation.

Reference to DPP and PCB

13. Existing arrangements in relation to allegations of criminal conduct would be changed. At present the chief officer is required to submit investigation reports to the DPP in every ca

/In future...

*Of the rank of Chief Inspector or above is intended (as now required in the Metropolitan Police) rather than Superintendent as for the provinces at present. This and a related change that would permit the delegation of chief officer functions to Assistant Chief Constable could be accompanied by Regulations under existing powers.

In future, however, this automatic requirement would be varied but in such a way as to allow the chief officer to decide lesser criminal allegations himself and to bring either criminal or (without the consent of the Board) disciplinary proceedings without going to the DPP first. There would, however, be a safeguard since the PCB would be empowered to direct that the papers be submitted to the DPP (without considering whether or not the evidence was sufficient) if of the opinion that the allegation, if true, was too serious to be disposed of disciplinarily.

14. This would have the effects of reducing the flow of more trivial cases to the DPP. Guidance would be issued to chief officers on how the arrangements were to be operated.

/15....

15. In the cases that continued to be referred to him, the DPP would consider whether the evidence was sufficient for criminal proceedings and would so advise the chief officer and the complainant, as now. After any reference to the DPP, the PCB would consider the disciplinary aspects, as now.

INVESTIGATION UNDER THE INDEPENDENT ASSESSOR

Mandatory reference

16. Where a complaint alleged that police action had been responsible for a death or serious injury* and in the view of the chief officer it could have been caused in the way alleged, he would be required to refer it to the independent assessor.

Discretionary reference

17. The chief officer would be able to refer any other case to the assessor where he considered it right to do so by reason of the gravity of the allegation or other exceptional circumstances. (This would facilitate the reference of a "serious case of assault" not falling within paragraph 16 above e.g. where the injury itself although not very serious was consistent with the assault alleged and for which there was apparently no other explanation; or a serious corruption case.)

Reserve powers

18. The assessor would be empowered at his discretion to require a chief officer to submit for consideration any complaint not already referred to him, together with such information as may be necessary to enable the assessor to decide whether by reason of the gravity of the allegation or other exceptional circumstances it should be investigated under his supervision.

Independent assessor's decision on handling

19. In any case referred to, or called in by, him the assessor would consider the chief officer's proposals for investigation and decide either:-

/(a)....

*"Serious injury" means medical evidence of fracture, damage to internal organ, impairment of bodily function, deep cut or laceration, but not bruising or superficial laceration.

(a) that the investigation should be carried out under his supervision by an officer from a different division of the force or from another force; or

(b) that the case should be referred back to the chief officer to be dealt with as at paragraphs 11-15 above.

For purposes of (a) the independent assessor would be empowered to endorse the nomination of the investigating officer or to require the submission of alternative proposals.

Conduct of investigation under independent assessor

20. In relation to the conduct of the investigation the function of the assessor would be to ensure that the investigation was done expeditiously, thoroughly and impartially. In the exercise of that function, he would be empowered to make such reasonable directions as were necessary, with the consent of the DPP in matters concerning the collection of evidence for possible criminal proceedings.

Reports

21. The investigating officer would be required to make to the assessor, and copy to the chief officer concerned, such interim reports as the assessor might reasonably require.

22. Where in the opinion of the investigating officer the investigation revealed internal disciplinary matters not arising directly from the complaint or giving rise to proposals for the suspension of officers under suspicion these would be reported by him directly to the chief officer. Such reports would have to be copied to the assessor.

23. The investigating officer's final report would be submitted to the assessor and copied to the chief officer. The chief officer would submit the report to the DPP as necessary. When the assessor was satisfied with the conduct of the investigation he would notify the chief officer and DPP as appropriate. No decisions on criminal or disciplinary action would be taken until the assessor had signified his satisfaction

/with....

with the investigation. Where the DPP decided against prosecution the chief officer would consider the need for disciplinary proceedings and refer the report to the PCB.

24. Any request by the DPP or chief officer for further information for their respective purposes would be notified to the assessor.

Location of assessor

25. The assessor would be the Chairman of the Police Complaints Board (or a Deputy appointed for this purpose). Assistant assessors to whom his functions could be delegated as members of the Board would be appointed as necessary. The working methods and location of the assistant assessor would not be prescribed although they would be expected to maintain close and direct contact with the conduct of the investigation. They might be appointed initially on a broad regional basis and a comprehensive regional presence would not be ruled out if experience suggested it was desirable.

THE PRESENT SYSTEM

1. Under section 49 of the Police Act 1964, where the chief officer[1] of police for any police area receives a complaint from a member of the public against a member of his force, he must, unless the complaint alleges an offence with which the officer has already been charged, record the complaint forthwith and cause it to be investigated. By virtue of this provision he may, and shall if so directed by the Secretary of State, request the chief officer of police for any other police area to provide an officer to carry out the investigation, and that chief officer must comply with the request. Under the Police (Discipline) Regulations 1977 a complaint which suggests that the officer concerned may have offended against the Regulations must be investigated by an officer of the rank of superintendent or above and from a different division of the force.[2]

2. The investigating officer submits his report to the deputy chief constable. Where it is alleged that an officer has committed a criminal offence the deputy chief constable is required by section 49 (3) of the Police Act 1964, unless he is satisfied that no criminal offence has been committed, to send the report to the Director of Public Prosecutions. The Director recommends whether or not the officer should be charged with a criminal offence. After any reference has been made to the Director on the criminal aspects the deputy chief constable decides whether the circumstances are such as to justify bringing a disciplinary charge against the officer in accordance with the Police (Discipline) Regulations. He is required by the Police Act 1976 to send to the Police Complaints Board a copy of the investigating officer's report together with a memorandum stating whether he has decided to bring disciplinary proceedings against the officer concerned and, if he has not, his reasons for not doing so. If the Board disagree with the decision of the deputy chief constable not to bring proceedings, they may recommend that disciplinary charges be brought. Where such charges are preferred and are denied by the officer the Board can direct that they be heard by a tribunal of two members of the Board in addition to the chief officer instead of the chief officer sitting alone. In the last resort the Board may direct that charges be brought, and in these circumstances, if they are denied by the officer, they must be heard by a tribunal.

3. Section 50 of the Police Act 1964 requires every police authority in carrying out their duty with respect to the maintenance of an adequate and efficient police force, and HM Inspectors of Constabulary in carrying out their duties with respect to the efficiency of any police force, to keep themselves informed as to the manner in which complaints are dealt with by the chief officer.

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1 In practice the functions of the chief officer under section 49 and the connected functions under the Police Act 1976 are delegated to the deputy chief constable, or his equivalent in the Metropolitan and City of London forces.

2 In the Metropolitan Police the requirement is for an officer of the rank of chief inspector or above. The Regulations also require that in the Metropolitan Police he be from a different "sub-division". But a change in nomenclature in 1978 brought the Metropolitan Police more into line with other forces, and what were formerly sub-divisions are, in practice, now known as "divisions".

HOME DEPARTMENT

Prosecution Arrangements (Royal Commission Report)

Mr. Arnold asked the Secretary of State for the Home Department whether Her Majesty's Government accept the recommendations on prosecution arrangements made by the Royal Commission on criminal procedure in part II of its report; and whether they have any proposals for early action on this matter.

Mr. Whitelaw: The Royal Commission found the existing prosecution arrangements in England and Wales to be deficient in respect of fairness, openness, accountability and efficiency. It considered whether the right course would be to set up an independent prosecution service organised on a national basis, on the lines of the procurator fiscal service in Scotland, but rejected this option because it believed that, if applied on the much larger scale appropriate to England and Wales, such an organisation would prove bureaucratic and top heavy. Its preference was for a locally based system, and it recommended that statutory provision should be made for the appointment of a Crown prosecutor for each police area, with the following functions: the conduct of all criminal cases once the decision to initiate proceedings had been taken by the police, with discretion to alter or drop charges; the provision of legal advice to the police on prosecution matters; and the provision of advocates in the magistrates' court, to the exclusion of the police, and briefing of counsel in the Crown court. At local level the Crown prosecutor would be accountable to a police and prosecutions authority. At national level my right hon. and learned Friend the Attorney-General would have responsibility for prosecution policy, and he or I would have responsibilities with regard to the administration and finance of the prosecution service similar to those which I have in relation to the police.

The Government recognise that there is a strong case in principle for establishing in some form a prosecution service independent of the police. At the same time we have to bear in mind the need to contain public expenditure and public service manpower, and to ensure that any changes made or planned keep within the limits of available resources. Moreover, we share the reservations which have been widely expressed, not least in the debate in this House last November, about the Royal Commission's proposals on how such a service should be organised and controlled. These proposals envisaged that a Crown prosecutor for each police area should be appointed by a local supervisory authority, subject to central Government approval, and should be accountable to that authority not only on administrative matters but also, in what the Royal Commission called an "explanatory" mode, for this general policy. We share the misgivings that appear to be widely felt about whether these proposals would be workable, and about the effect that they might have on the independence of prosecutors' decisions.

However, the alternative of a service organised on a national basis raises quite a different set of problems which were not examined by the Royal Commission in any detail, and which have not otherwise received the study that they require. At present the only national prosecuting agency dealing with crime in general is the department of the Director of Public Prosecutions, dealing with a relatively small number of cases, though they include the most important. An expansion of the Director's responsibilities to take in all prosecutions, regardless of their importance, would mean a dramatic change in the nature of the Director's office and in the size and organisation of his Department. There would be implications, too, for the nature and extent of the Law Officers' accountability to Parliament for prosecution decisions. There would also be some danger, as the Royal Commission feared, of creating a bureaucratic and too heavy structure. For these reasons it would, in the Government's opinion, be unwise to dismiss altogether the concept of a prosecution system organised on a local basis: there may be alternatives to the Royal Commission's scheme which would avoid the dangers both of over-centralisation and of the kind of local accountability which the Commission proposed.

For the purpose of carrying out a further analysis and study of these problems, the Government proposes to reappoint the working party on prosecution arrangements which last year carried out a preliminary assessment for Ministers of Part II of the Royal Commission's report. This is a working party of officials under Home Office chairmanship, comprising also representatives of the Lord Chancellor's and Law Officers' Departments, and including the Director of Public Prosecutions. Given that the Government do not find the Royal Commission's proposals acceptable as they stand, the working party's task now will be to advise Ministers on what would be the best model for the organisation of an independent prosecution service on some other basis; what problems would arise and how best they could be solved; and what the resource implications would be. They will not be limited to considering organisation on a national basis, but will be able also to examine local, regional and other possible forms; and they will carry out their tasks in consultation with representatives of the bodies which have an interest in the subject—including the prosecuting solicitors now in office, the legal profession as a whole, local authorities and the police.

The Government do not, however, intend to await the outcome of the study before taking steps in the direction which the Royal Commission wanted. The Commission itself saw the transition to an independent prosecution service as a gradual process. In keeping with that view, we propose to take three steps which we regard as interim measures. First, my right hon. and learned Friend the Attorney-General proposes to give to all who prosecute on behalf of the public some guidance on criteria for prosecution which will be closely in accordance with the spirit of the Royal Commission's recommendations. My Department will bring this guidance to the attention of chief officers of police. Secondly, the Director of Public Prosecutions will, with the approval of my right hon. and learned Friend, ask chief officers of police to consult him in every case in which the chief officer wishes to continue criminal proceedings contrary to the advice of the solicitor having the conduct of the proceedings. Thirdly, we shall maintain the policy of favouring the establishment of prosecuting solicitors' departments: and my Department will proceed to draw up models for the organisation of prosecuting solicitors' departments with a view to promoting efficiency and cost-effectiveness. Interim measures on these lines will be taken after consultation with bodies outside Whitehall, and will be supplemented

by research aimed at updating the information obtained by [illegible]al Commission about the working of the existing arrangements.

Buckingham Palace (Security)

Mr. Arthur Lewis asked the Secretary of State for the Home Department whether he will give details of the numbers of men, plant and equipment connected with the security arrangements at Buckingham Palace and the change in the number and costs since 1979; and, if this information is not available for public communication, he will ensure that it is made available to those investigating the most recent security problems which occurred in July.

Mr. Whitelaw: It would not serve the interests of security to make these details public. The information is fully available to those inquiring into the problems.

Mr. Arthur Lewis asked the Secretary of State for the Home Department (1) whether he will arrange to have a special inquiry conducted by a police force unconnected with the Metropolitan force into the various failures in the security arrangements at Buckingham Palace since October 1979;

(2) whether he will take action to appoint a Committee of the House of Commons or Privy Councillors or a committee of judicial inquiry into all aspects of the failures of the security precautions which have occurred on several occasions since October 1979.

Mr. Whitelaw: No. In my statement on 21 July—[Vol. 28, c. *397-407*]—I reported on the investigations which had been undertaken and are continuing, and announced new arrangements and the inquiry by Lord Bridge. I believe that these measures fully meet the need for thorough and dispassionate inquiries.

Mr. Arthur Lewis asked the Secretary of State for the Home Department whether he will give a detailed list of the security breakdowns in the protection of Buckingham Palace and the Royal Family since October 1979, the dates of such incidents, and what happened in each instance.

Mr. Whitelaw: I refer the hon. Member to the reply I gave on 19 July to a question from my hon. Friend the Member for Aldridge-Brownhills (Mr. Shepherd), to my statement on 21 July on Buckingham Palace security—[Vol. 28, c. *397-407*]—and the related detailed account of the major breach of security on 9 July—[Vol. 28, c. 19-20]—which I have had placed in the Library, and to the reply I have given today to a question from my hon. Friend the Member for Ealing, North (Mr. Greenway).

Mr. Arthur Lewis asked the Secretary of State for the Home Department whether he will cause an investigation to be made to ascertain how and why the interim police report on the security breaches at Buckingham Palace was given or leaked to the press, radio and television before his promised official report to the House.

Mr. William Whitelaw: I refer the hon. Member to the reply I gave on 21 July to a supplementary question from the right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley), which applies generally to the prior, speculative reporting of the report.—[Vol. 28, c. 399-400].

Mr. Greenway asked the Secretary of State for the Home Department if he will make a statement on security at Buckingham Palace on 21 July, following the entry into the precincts of a minicab containing cartridges.

Mr. Whitelaw: I understand from the Commissioner of Police of the Metropolis that the driver of a vehicle which had taken a guest to an investiture ceremony at the Palace on 21 July explained to representatives of the press that he had a number of shotgun cartridges in the boot of his car. It would not serve the interests of security to give in detail the security measures that were in operation on 21 July. They included a check on everyone attending the ceremony, including the passenger of the vehicle, on entry to the Palace building. There were checks of vehicles by "sniffer" dogs trained to detect materials used in the manufacture of explosive devices. The drivers of vehicles parked within the Palace precincts were required to remain with their vehicles, under police supervision.

Security Breaches (Central London)

Mr. Arthur Lewis asked the Secretary of State for the Home Department whether he will state the police district which covers and deals with security arrangements at the House of Commons, Buckingham Palace and the Westminster area and, since October 1979, the numbers of breaches of security that have occurred in this police district in public buildings and the dates and details of such incidents; and what action was taken against those responsible for these breaches in security.

Mr. Whitelaw: The City of Westminster is policed in part by A, C and D districts of the Metropolitan Police. Buckingham Palace and the Palace of Westminster are within A district. I indicated in my statement on 21 July—[Vol. 28, c. 397-407]—the nature of the previous arrangements for the discharge of police responsibilities in respect of security at Buckingham Palace and explained the new arrangements that have been instituted. Responsibility for security at the Palace of Westminster rests primarily with the authorities of both Houses. Such of the detailed information sought in respect of all public buildings within A district as may be available to the police could be collated centrally only at disproportionate cost.

Commissioner of Police of the Metropolis (Appointment)

Mr. Tilley asked the Secretary of State for the Home Department if, pursuant to his reply to the hon. Member for Newham, North-West (Mr. Lewis) on 25 March, *Official Report*, c. *384*, he will set out in the *Official Report* the provisions of section 1 of the Metropolitan Police Act 1829 relating to the appointment of the Commissioner of Police of the Metropolis which remain unrepealed.

Mr. Mayhew: Section 1 of the Metropolitan Police Act 1829, as amended by the Justices of the Peace Act 1968 and the Administration of Justice Act 1973, now reads:

"It shall be lawful for his Majesty to cause a new police office to be established in the City of Westminster, and from time to time by warrant under his sign manual to appoint during his Majesty's pleasure a Commissioner of Police of the Metropolis to execute the duties of chief officer of the police force hereby established, together with such other duties as shall be hereinafter specified, or as shall be from time to time directed by one of his

Home Assess, Rights of Entry,
Pt 2

Home Affairs

PRIME MINISTER

H COMMITTEE MINUTES

You may be interested to see the attached copy of the minutes of the H Committee held on Tuesday 29 June. The main item of business was the Police and Criminal Procedures Bill and you have already seen the major papers produced, one on the introduction of an independent element into the investigation of complaints against police, and on consultation between the police and the community, about which I have given you an additional note from the Home Office. The Committee also discussed a number of relatively minor changes in the law of criminal evidence, including changes in the status of spouses as witnesses in criminal cases, and in the admissibility of computer evidence. For the most part the Committee accepted the proposals set out in the papers before it, although there was some discussion about whether complainants against the police ought to have direct access to the independent assessor rather than, as proposed, going through the Home Secretary which would expose the latter to continuous political pressure (I understand this is a point made by the CPRS). It was also noted that the issues both of complaints and consultation would raise particularly difficult issues in Northern Ireland and that consideration of legislation to apply them there should await the passage of the England and Wales Bill.

The Home Secretary's major point is that the Bill as a whole should be presented as a balanced package containing on the one hand measures to increase the powers of police along the lines proposed by the Royal Commission on Criminal Procedure while on the other hand improving police relations with their local communities and increasing confidence in the investigation of complaints.

The Committee also considered that perennial hot potato experiments on animals. The position is that the Government's election manifesto included a commitment to replace the Cruelty to Animals Act 1876 which regulates animal experiments.

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This commitment has been reaffirmed on several occasions recently but has been placed in the context of the Council of Europe Convention on animal experimentation which has now been concluded. The Committee proposed, therefore, a White Paper well before the next General Election; such a White Paper would have to tackle ahead on the disagreement between this country and the other participants in the Convention on the so-called "pain condition". This essentially comes down to whether there is an inviolable prohibition on the causing of severe pain in experiments (of which we are in favour) or whether there should be certain exemptions. As I know from my Home Office days, animal experiments are a highly emotive subject and the Government will receive small thanks for tackling a long overdue task.

Tim Raison

30 June 1982

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Home Affairs

PRIME MINISTER

POLICE COMPLAINTS PROCEDURE

You may be interested to see the attached paper by the Home Secretary which will be considered at H Committee on 28 June. The paper makes proposals for changes in the police complaints procedure.

As you know, the present system allows for independent consideration of complaints against the police by the Police Complaints Board but not for independent investigation. The most extreme critics of the present system propose a wholly independent system to which the Government is opposed on grounds of principle and cost. Lord Scarman in his Report last year and the Home Affairs Select Committee, whose Report was published on 9 ~~July~~ June, propose that there should be a measure of independence in the investigatory procedure; the Government has already accepted this in principle.

The proposed legislation substitutes a three-tier system of investigation for the present uniform procedure.

(1) In minor cases it proposes an informal system of local conciliation (which if used extensively would reduce bureaucracy).

(2) For more substantial complaints and for those where informal conciliation did not work, it proposes a procedure similar to the present arrangements.

(3) For more serious complaints (and this is the real departure) it proposes investigation by a senior police officer, normally from an outside force under the supervision of an independent assessor, i.e. the investigation would have an element of independence. The assessor would be the Chairman of the Police Complaints Board who would be assisted by a small number of assistant assessors probably appointed on a regional basis. The Home Secretary estimates that there might need

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to be three additional staff on the Police Complaints Board and that the additional cost would be approximately £200,000 in 1983/84 and about £500,000 per annum thereafter.

The new system will not satisfy the more extreme critics of the police but no system which was either politically acceptable or could command police confidence would do that. The proposed new arrangements do, however, strike a balance between acceptability to the police (they will be welcomed by the Association of Chief Police Officers and the Superintendents' Association and will not be opposed by the Police Federation) and the need for the introduction of that degree of independence needed to command greater public confidence.

21 June 1982

M. Whitmore

Confirmed for
11.00 a- Wed. 6th Jan.
Ed. 5/1

Personal and confidential

Mr. Whitmore

When Mr David Mitchell, at the Prime Minister's request, undertook a review of powers of entry conferred by existing legislation, he recommended that the Law Officers — specifically the Solicitor General should be asked to scrutinise any future proposed powers of entry. This recommendation was accepted.

2. The arrangements are giving rise to certain problems, and I think we ought to do something about them. I should prefer to discuss the problems and possible solutions with the Prime Minister orally,

rather than put them into writing, at this stage, if you could find a few minutes for me in her timetable.

RCA 5.i.82

Note.

The Prime Minister discussed this briefly with Sir Robert Armstrong who explained that the Home Affairs Department were not staffed to deal with this matter and that the Attorney General was complaining that the Treasury was overworking the Solicitor General from other and more important work.

The Prime Minister agreed that Sir Robert Armstrong should explore whether the Home Affairs Department could take on this matter, consulting the Law Officers as its legal experts.

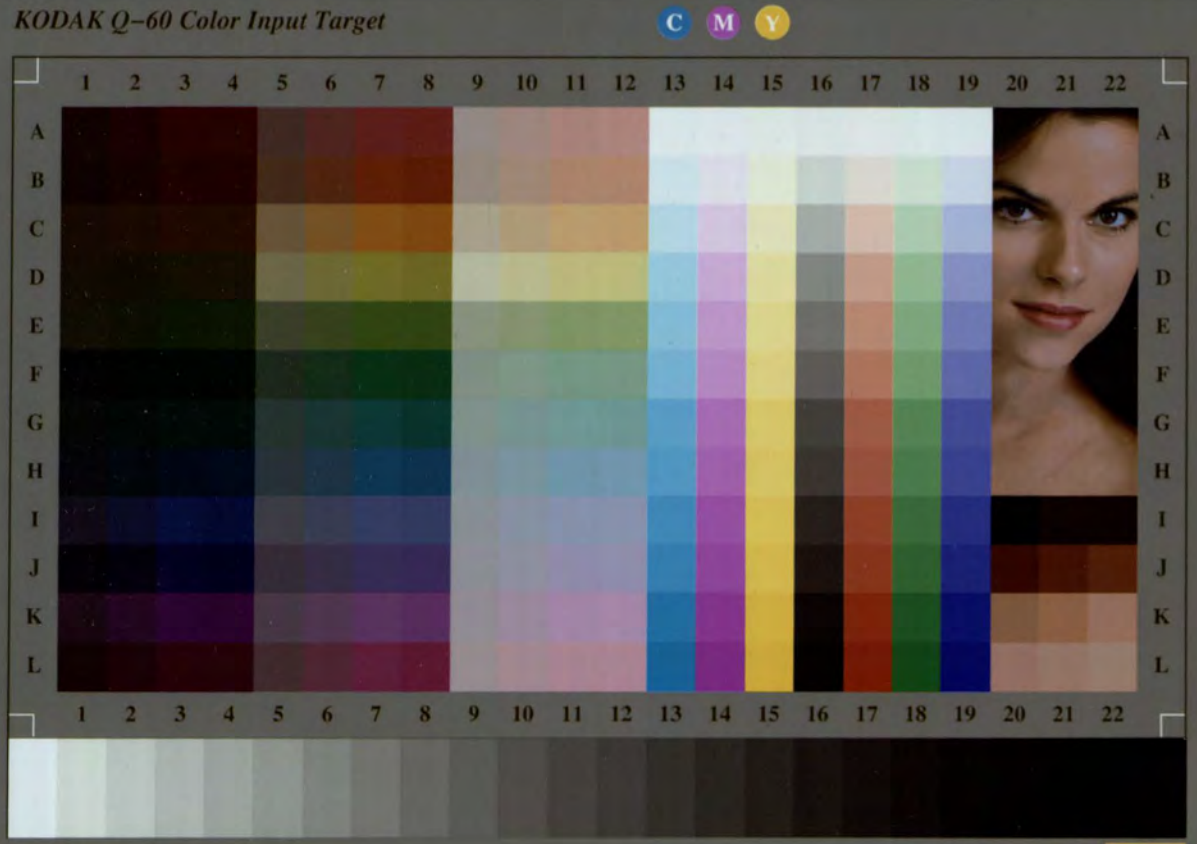
6.i.82.

PART 1 ends:-

TR to WR 25.9.81

PART 2 begins:-

RTA to CAW 5.1.82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