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PREM 19/2377

PART 15

MT

Confidential Filing

Legislative Programme

PARLIAMENT

(In folder attached: "Future Legislation 1987/88 Session" - DTI to Cabinet Office Paper 19.1.87)

Part 1: May 1979

Part 15: May 1986

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
2.5.86		27.10.86					
7.5.86		29.10.86					
13.5.86		30.10.86					
15.5.86		31.10.86					
21.5.86		10.11.86					
MAY 86		14.11.86					
28.5.86		24.11.86					
29.5.86		26.11.86					
5.6.86		27.11.86					
20.6.86		23.12.86					
10.7.86		28.1.87					
17.7.86							
22.7.86		Ends.					
24.7.86							
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23.10.86							
24.10.86							

PREM 19/2377

PART 15 ends:-

NLW to MOD 28/1/87

PART 16 begins:-

SS to NLW 2/2/87.

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC(86) 22nd meeting, item 1	05/06/1986
CC(86) 27th meeting, item 1	10/07/1986
CC(86) 28th meeting, item 2	17/07/1986
CC(86) 29th meeting, item 1	24/07/1986

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 _____ Date 20/2/2016.

PREM Records Team

MEA

MR ADDISON

THE LEGISLATIVE PROGRAMME

I should record the outcome of the Lord President's discussion yesterday with the Prime Minister about the progress of this year's legislative programme. Because of the sensitivities, the Lord President agreed that I should not minute widely.

He was much troubled by the Local Government Total Expenditure Bill ~~here~~ which was taking up too much time. But he thought that it should be through by its deadline. Progress on the Education Bill was good.

Although the Scottish Rates Bill was making good progress, he retained doubts on its timetable. The Prime Minister emphasised that it was essential for it to be passed by early June at the latest. The Lord President said that this would mean that the main Local Government Bill would have to be dropped. This was no great loss; in any event it would not have been passed by July. A more damaging casualty would be the Criminal Justice Bill, which if priority was given to the Scottish Rates Bill, would probably not be passed by June. He was confident that even with priority given to the Rates Bill, the Criminal Justice Bill should receive Royal Assent by July. He would consider with Mr Ridley, who was quite relaxed about losing the main Local Government Bill this year, the presentation of the position on the main Local Government Bill. The Prime Minister closed the meeting by emphasising that she was most anxious for the Criminal Justice Bill to receive Royal Assent by June, if that were at all possible.

N.L.W.

N.L. Wicks
28 January 1987

SK/00

SECRET AND PERSONAL

1. Mr Negrine
2. Prime Minister (4)

Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 6460
Switchboard 01-213 3000 GTN Code 213
Facsimile 01-213 5465 Telex 915564

The Rt Hon Viscount Whitelaw
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1

23 December 1986

Dear Willie,

Legislative Programme 1987/88

You sent me a copy of your minute of 24 November to the Prime Minister about bids for the 1987/88 legislative programme. My private secretary will be replying formally to your private secretary's letter of 27 November setting out my Department's bids.

I thought that I should write to you personally about the most important of my bids and also about two other measures which I regard as crucially important to our strategy for promoting employment and reducing unemployment.

My main legislative bid for the first session of next Parliament is a bill to abolish the Manpower Services Commission and establish a new institutional framework for employment and training programmes. Because of the sensitivity of the issues involved, it would not be suitable for the last session of this Parliament. It would therefore be a category B bill with a high priority for the first session of a new Parliament. It would not be long (I hope no more than 10-15 clauses) but it would be contentious. I would hope to introduce it as early as possible in the session so that there is a good chance that its provisions can be brought into effect within 6 months. This is important because I am advised that I cannot take back all of the functions of the Commission without legislative cover: there will therefore be an awkward period while the Commission is still operating and clearly this should be kept to a minimum.

Secondly, I am convinced that we should lose no time in the next Parliament in tackling other controversial issues which directly affect employment prospects. As you know, I have a remit to return to H with proposals for removing entitlement to supplementary benefit for everyone under 18. We are agreed

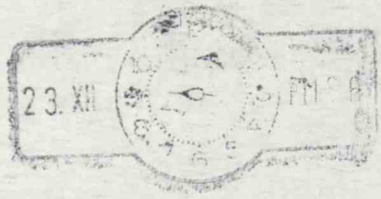
SECRET AND PERSONAL

that it is wrong that, with the establishment of Two Year YTS, young people should have the option of continuing to live on benefit and it is particularly important that school leavers should not acquire the "claimant habit" at the outset of their working lives. There is no prospect of our making this change in the current session because there is no suitable legislative vehicle. But I trust that room can be found for an appropriate bill - presumably a Social Security Bill - in the first session of the next Parliament. I should add that I have asked my officials to do further work on the costs and savings of removing supplementary benefit entitlement from the under 18s and that I shall be writing to you and other interested colleagues early next year. Given the slower timetable for implementation and the political sensitivity of this whole issue I suggest that we limit the circulation of papers as much as possible. You may judge that it is no longer necessary to have an early, full discussion of the subject in H.

In addition, I very much hope that time can be found in the first session of the new Parliament for legislation on rent deregulation. This is vitally important if we are to do anything really effective to help unemployed people move to areas of employment growth and particularly to deal with the skill shortages and general overheating of the labour market in the South East.

I am sending a copy of this letter to the Prime Minister only.

PARLIAMENT legislature Programme PTIS



For Information.

CONFIDENTIAL

CABINET OFFICE
70 WHITEHALL
LONDON SW1A 2AS

01-930 5422 ext

233 7665

27 November 1986

Dear Private Secretary

LEGISLATIVE PROGRAMME 1987/88

1. I am writing to ask for your Minister's proposals for legislation in 1987/88.

2. You will have seen a copy of the Lord President's minute of 24 November to the Prime Minister. The Lord President drew attention to the fact that a General Election must be held in or before the spring of 1988, and suggested that Departments should be asked to frame their proposals in a way that will enable the Government to plan for two possible situations:

a. an election in the spring of 1988, which would mean;

(i) a short session of up to six months starting in October/November 1987, followed by
(ii) the first session of a new Parliament, starting in the spring of 1988 and presumably continuing until July 1989; and

b. an election in or before the autumn of 1987, followed by the first session of a new Parliament.

3. If the session beginning in October/November 1987 turns out to be the first session of a new Parliament, a normal number of Bills will be needed for early introduction. Since it is not

practicable for Parliamentary Counsel to draft a second and different set of Bills for a possible short session starting in October/November 1987, the Prime Minister has agreed to the Lord President's proposal that departments should be asked to divide their legislative proposals for 1987/88 into the following three categories:

Category A
Bills considered suitable for a session starting in October/November 1987, whether this turns out to be a short or a normal session. (Bills in this category must therefore be capable of passing through Parliament in a maximum of six months).

Category B
Additional Bills considered suitable for a session starting in October/November 1987 if this turns out to be the first session of a new Parliament.

Category C
Bills not included in Category A or B which are considered suitable for a long session starting in the spring of 1988.

4. I should be grateful if you could let me have four copies of your department's proposals for Bills in separate lists for each of the three categories, set out in the form at Annex A. Bids for Private Member Handout Bills (also four copies, please) should be set out in the form at Annex B. I enclose notes for guidance on the completion of the forms at Annex C. If you have no candidates please let me have a 'nil' return.

5. I should be grateful if you could send me replies by **Friday 8 January**. We intend to hold meetings in the Cabinet Office on Friday 16 January with those in your Department who will be responsible for the main Bills in your department's

bids so that we can have a reasonably good idea of the contents of these Bills. To this end it would be very helpful if you could send me, with your bids, the name and telephone number of the official who will be responsible for each of your main Bills so that we can arrange a meeting directly with them.

I am sending this letter to the Private Secretaries to all Ministers responsible for Departments and sending copies to Joan MacNaughton (Lord President's Office, Stephen Wood (Lord Privy Seal's Office), Murdo MacLean (Chief Whip's Office), Rhodri Walters (Lords Chief Whip's Office), Sir George Engle (First Parliamentary Counsel) and Norman Adamson (First Parliamentary Draftsman for Scotland).

ROSALIND MULLIGAN

Encs

Annex A

CATEGORY (A, B OR C):

GOVERNMENT BILLS PROPOSED FOR 1987/88

Class of Bill (Essential, Programme, Contingent etc):

PRIORITY AND TITLE; PURPOSE	DEPT	POLITICAL ASPECTS	LENGTH PARL. PROCEDURE; ROYAL ASSENT	FINANCIAL MANPOWER AND EC ASPECTS	TIMETABLE FOR PREPARATION

Annex B

PROPOSED PRIVATE MEMBER HANDOUT BILLS FOR 1987/88

PRIORITY AND TITLE; PURPOSE	DEPT	LENGTH	INTEREST GROUPS AFFECTED AND LIKELY ATTITUDES	FINANCIAL MANPOWER OR EC ASPECTS	TIMING OF POLICY APPROVAL AND INSTRUCTIONS TO COUNCIL

NOTES ON COMPLETING ANNEXES

ANNEX A

GENERAL

1. Entries should be in note form, grouped by class of Bill (see below) and numbered in order of priority within each class. If there is space successive items may be listed on the same page; conversely a few longer items may need to run over onto a further page. Returns should be on white paper.

CLASS OF BILL

2. Bids should be classed as 'essential', 'contingent', 'programme' or 'uncontroversial'. There are notes on these descriptions below. Where different parts of a Bill fall into different classes, please include brief notes on this at the foot of the Bill's entry in the **PURPOSE** column.

a. Essential. Bills may be included in this class only if they must be enacted during the Session in question, eg because existing powers or finance would otherwise expire or because of treaty obligations. Please give the reason in the **PURPOSE** column. A Bill should not be classed as essential simply because it has high political priority; that can be made clear in the **POLITICAL ASPECTS** column. A Bill which is basically essential can sometimes include some non-essential items too. They should be clearly distinguished, and before including them Departments should consider their effect on the length of the Bill and the need to avoid controversial provisions which might affect the Bill's prospects of enactment by the required date.

b. Contingent. These are Bills which might during the relevant Session become essential as defined above, for example if a pending court judgment were to put important powers into question. Bills which may become desirable for some non-technical reasons should be included in the 'programme' or 'uncontroversial' class - with a brief explanation at the bottom of the **PURPOSE** entry of what they depend on.

c. Programme. These will form the main part of the legislative programme and are Bills which can already be indentified as being desirable for enactment in the relevant Session, have a significant political priority and can be prepared in time.

d. Uncontroversial. These are Bills which are desirable for enactment in the relevant Session but are not expected to be controversial in Parliament. It will be assumed that a Bill in this class is suitable for Second Reading Committee Procedure (see paragraph 8b below) unless the **PARLIAMENTARY PROCEDURE** entry specifically records that it is not, and briefly indicates why. In the case of a Bill which might also be suitable for a Private Member, reference to this should be made in the **PARLIAMENTARY PROCEDURE** column and a full entry should also be made in the separate schedule covering Bills suitable for offering to Private Members (Annex B).

PRIORITY AND TITLE

3. Within each class, please number your Bills in the order in which your Department would like to give them priority. As regards the title, a provisional wording is quite acceptable.

PURPOSE

4. Please list the various topics to be covered by the Bill, briefly indicating the purpose in each case. This list should cover all the substantive topics likely to be included. Because of their impact on drafting capacity and parliamentary handling, the business managers and other members of QL Committee are likely to resist attempts to make substantial additions later on.

DEPARTMENT

5. Only the Department which would take the lead in preparing the Bill needs to be mentioned here. It is sufficient to use the short form eg "DHSS", "DTp".

POLITICAL ASPECTS

6. Please state briefly what, if any, public commitments have been given by the Government about the Bill's introduction or timing. (NB firm commitments should not have been made without prior consultation with the Chairman of QL Committee, and in any case should normally be avoided until a prospective Bill has secured a place in the programme). Please also cover briefly -

a. the Bill's likely reception in Parliament, including whether it is likely to arouse particular interest in the House of Lords;

b. what the attitude of the official Opposition is likely to be;

c. whether it is likely to be controversial politically or for any other reason;

d. whether there is pressure for the Bill from groups representing particular interests;

e. whether it is likely to appeal to or be strongly opposed by any particular sections of the community.

LENGTH

7. An estimate of the length of the Bill is needed so that the demands on drafting capacity and Parliamentary time can be assessed at the earliest possible stage. It will not normally be possible to give an accurate forecast of the number of clauses and schedules, but some indication such as 'very short' (ie not more than 4 clauses), 'short' (5-12 clauses), 'medium' (13-25 clauses), 'substantial' (26-50 clauses) or 'long' (over 50 clauses) should be given. The approximate number of clauses for a long Bill should be indicated. If the Bill would be short but the schedules lengthy please say so. Where a Bill would cover more than one distinct topic, please indicate roughly what proportion of the Bill would be devoted to each topic. Departments should consult their legal advisers about the likely length of Bills.

PARLIAMENTARY PROCEDURE

8. A Bill may be suitable for special forms of Parliamentary procedure. Please state whether it might be suitable for or require any of the following -

a. Introduction in the House of Lords.

b. Second Reading Committee procedure in the House of Commons - that is, the Bill is likely to be accepted on all sides of the House as uncontroversial and of little or no

political significance (there is no need to mention this specifically in the case of Bills categorised as 'uncontroversial').

c. Scottish or Welsh Grand Committee procedure in the House of Commons.

d. Offering to a Private Member successful in the Ballot. Such a Bill should be short, simple, non-controversial in party political terms and without significant financial implications. (In such a case a full entry for the Bill should also be made in the separate schedule dealing with Bills suitable for Private Members - Annex B).

e. Special Standing Committee procedure in advance of normal Committee Stage.

f. Committee proceedings on the Floor of the House of Commons, for part or all of the Bill.

g. Committee proceedings in a Public Bill Committee in the House of Lords.

h. Treatment as a hybrid or potentially hybrid Bill.

ROYAL ASSENT

9. For 'essential' and 'contingent' Bills, please give with reasons the date by which Royal Assent is needed. For other Bills, please give a target date (with reasons) only if Royal Assent is essential or desirable before the end of the Session. Please make it clear in each case whether Royal Assent by a particular date is essential - eg because borrowing limits will otherwise be exceeded - or desirable but not essential.

FINANCIAL AND MANPOWER IMPLICATIONS

10. Please indicate the effect on central and local government expenditure and manpower of the proposed Bill for the PES period, and whether PES provision has been made for any necessary expenditure. Any separate implications for the Public Sector Borrowing Requirement (PSBR) should also be mentioned, especially if they affect the date by which Royal Assent is required (see also paragraph 9 above on **ROYAL ASSENT**).

EUROPEAN COMMUNITY (EC) IMPLICATIONS

11. Please say whether the Bill is required to fulfil any EC commitment. If so, any relevant timing considerations should also be mentioned under **ROYAL ASSENT.**

TIMETABLE FOR PREPARATION

12. We need to have the best possible estimates of -

a. when Ministers' collective policy clearance will be sought (ie from the appropriate Ministerial Cabinet Committee or, exceptionally, full Cabinet). If this is expected to be in stages, eg outline clearance before public consultation and detailed clearance afterwards, please cover each stage. Any likely cause of delay, eg dependence on autumn PES decisions or publication of an inquiry report, must be covered;

b. whether and if so when and for how long any public consultation on the proposals will be carried out;

c. when firm instructions will be delivered to Parliamentary

Counsel. (If it is proposed to deliver instructions in instalments or at different times for different topics please give details); and

d. when the Bill is expected to be ready for introduction.

It is important to have realistic estimates to enable Ministers to plan the use of Parliamentary time. Over-optimistic timetables are unhelpful all round. Please be as specific as you can - indicating where possible 'early', 'mid' or 'late' when naming a month. In cases of doubt, earliest and latest dates should be given for each stage. Account should be taken of Parliamentary Counsel's absence on leave (normally for the whole of August). Departments are strongly advised to consult their legal advisers on entries for dates for delivery of instructions.

ANNEX B

This annex is for Bills your Department considers would be suitable, and can be made ready, for offering to Private Members of the House of Commons who are successful in the Ballot for Bills which will take place at the beginning of the 1987/88 session. The purpose of putting together this list now is to avoid a rush of requests for policy clearance and drafting in the autumn when pressure of work on Government Bills is at its greatest. Once Departments' proposals have been considered and agreed, it should be possible to carry out preparatory work on at least some of the Bills in advance of the Ballot. There is no guarantee that a particular Bill will be taken up - that is a matter for individual Private Members - but if it is not chosen in one session, a ready-drafted Bill will remain available for subsequent sessions. Your Department's list should include any Bills which have been offered or introduced in previous sessions without success and which you would like to offer again.

To be suitable for offering to a Private Member a Bill should normally be short, simple, non-financial and not controversial in party political terms. It may be unsuitable if it is likely to be unpopular with prominent non-parliamentary interest groups, but such proposals may be included on the list provided that the likely reaction of outside groups is explained. There is no need to use a separate page of Annex B to list each bid, but bids should be numbered in the Department's order of priority.

Overlap Between Lists

Departments may consider that some Bills merit places in the Government programme but would also be suitable for offering to Private Members. If genuinely suitable for both categories they should be included on both lists, with a cross-reference in each entry to the other one. Inclusion in the Private Members' list as well as the Government one will not necessarily lead to a Bill being excluded from the latter by QL Committee. It is important for each entry to make clear whether there are any special timing considerations which could influence the choice which is finally made.

Cabinet Office
November 1986

CONFIDENTIAL

Luce to

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

26 November, 1986.

Dear Joan

LEGISLATIVE PROGRAMME, 1987-1988

This is to confirm that the Prime Minister is content for QL to commission bids for the legislative programme for 1987-88 as the Lord President proposes in his minute of 24 November.

I am sending copies of this letter to the Private Secretaries to the members of the Cabinet, to the Minister of State, Privy Council Office (Mr. Luce), the Law Officers, the Chief Whips of both Houses, the Lord Advocate, the Solicitor General for Scotland, the First Parliamentary Counsel, and Sir Robert Armstrong.

Yours ever

Mark Addison

(M.E. Addison)

Miss Joan MacNaughton,
Lord President's Office.

CONFIDENTIAL

PP's please LB CCB/OP

Prime Minister (2)
For information only.
MEA 25/11

PRIME MINISTER

LEGISLATIVE PROGRAMME 1987/88

The Queen's Speeches and Future Legislation Committee (QL) will shortly be asking Departments for their bids for the legislative programme for 1987/88. These bids will form the basis of QL's subsequent recommendations to the Cabinet.

2. Since a General Election must be held in or before the spring of 1988, I think that Departments will have to be asked to frame their proposals in a way that will enable us to plan for two possible situations:

a. an election in the spring of 1988, which would mean;

i. a short Session of up to six months starting in October/November 1987, followed by

ii. the first Session of a new Parliament, starting in the spring of 1988 and presumably continuing until July 1989; and

b. an election in or before the autumn of 1987, followed by the first Session of a new Parliament.

3. If the Session beginning in October/November 1987 turns out to be the first Session of a new Parliament, we shall need a normal number of Bills for early introduction. Parliamentary Counsel clearly cannot draft a second and different set of Bills for a possible short Session starting in October/November 1987, and so I think that Departments should be asked to divide their proposals into the following categories:

A. bills considered suitable for a Session starting in October/November 1987, whether this turns out to be a short or a normal Session;

B. additional bills considered suitable for a Session starting in October/November 1987, if this turns out to be a normal Session (ie the first Session of a new Parliament);

C. bills not included in category A or B which are considered suitable for a long Session starting in the spring of 1988.

4. If the Election is not held until the spring of 1988, we could then reconsider the position and draw up, on the basis of the proposals in categories B and C, a programme for the long first Session of the new Parliament which would follow the Election. This would doubtless include a fair number of bills in category B on which work would have begun and which should, therefore, be ready for introduction at the beginning of the long first Session.

5. It may be difficult for some Departments to identify bills in category C, and until the Manifesto is produced there must be some uncertainty about the priorities for legislation in the next Parliament. But we cannot afford to let the summer of 1987 go by without preparing some major bills for that Parliament.

6. All proposals should, of course, assume an outright Conservative win at the Election.

7. I am sending a copy of this minute to the members of the Cabinet, to the Minister of State, Privy Council Office (Mr Luce), the Law Officers, the Chief Whips of both Houses, the Lord Advocate, the Solicitor General for Scotland, First Parliamentary Counsel and Sir Robert Armstrong.

Privy Council Office
24 November 1986

PARLIAMENT Reg. Prog #15.

CONFIDENTIAL

File 8A

10 DOWNING STREET

From the Principal Private Secretary

24 November 1986

1987-88 SESSION

The Prime Minister has seen Lord Whitelaw's personal and confidential minute of 20 November in which he seeks her agreement to issuing the commissioning letter for the Legislative Programme 1987-88.

As I told you this morning, the Prime Minister is content for the commissioning letter to be issued.

(N. L. WICKS)

Miss Joan MacNaughton,
Lord President's Office.

CONFIDENTIAL

8/4

PERSONAL AND CONFIDENTIAL

BF today 1

Prime Minister
Content?

Yes pse N.L.W
20.11

PRIME MINISTER

1987/88 SESSION

QL needs to commission very shortly bids from colleagues for bills in the 1987/88 Session. Since the 1987/88 Session could either be the last Session of this Parliament or the first Session of a new Parliament, depending on Election timing, the commissioning letter needs to cater for both options.

2. We were faced with exactly the same situation in the run-up to the 1983 Election and I and the other business managers, with whom I have discussed this, see considerable advantage in keeping closely to the format of the commissioning letter used then. Updated into present terms this caters for all the Election options up to and including June 1988 and therefore will not give any signal as to which option might be preferred. A draft of the commissioning letter is attached.

3. In reaching this conclusion I have been mindful of your wish that the programme for the first Session of a new Parliament should contain some exciting new measures and not merely be a repetition of Bills which had failed to get through in the previous Session. The commissioning letter is only the start of the QL process and merely produces the raw material on which we will subsequently work. It will thus be open to us to commission later bids if the first trawl does not produce sufficient attractive measures and it will also be open to us to leave sufficient space in the programme to include subsequently measures which we would not wish to unveil in advance of publication of the Manifesto.

4. If you are content with this approach I would be grateful if your office could let mine know as soon as possible. It would be desirable to issue the commissioning letter at the beginning of next week.

N.L.W

Privy Council Office
20 November 1986

CONFIDENTIAL

DRAFT

PRIME MINISTER

LEGISLATIVE PROGRAMME 1987/88

The Queen's Speeches and Future Legislation Committee (QL) will shortly be asking Departments for their bids for the legislative programme for 1987/88. These bids will form the basis of QL's subsequent recommendations to the Cabinet.

Since a General Election must be held in or before the spring of 1988, I think that Departments will have to be asked to frame their proposals in a way that will enable us to plan for two possible situations:

a. an election in the spring of 1988, which would mean -

(i) a short Session of up to six months starting in October/November 1987, followed by

(ii) the first Session of a new Parliament, starting in the spring of 1988 and presumably continuing until July 1989; and

b. an election in or before the autumn of 1987, followed by the first Session of a new Parliament.

If the Session beginning in October/November 1987 turns out to be the first Session of a new Parliament, we shall need a normal number of Bills for early introduction. Parliamentary Counsel clearly cannot draft a second and different set of Bills for a

possible short Session starting in October/November 1987, and so I think that Departments should be asked to divide their proposals into the following categories:

A. Bills considered suitable for a Session starting in October/November 1987, whether this turns out to be a short or a normal Session;

B. Additional Bills considered suitable for a Session starting in October/November 1987, if this turns out to be a normal Session (i.e. the first Session of a new Parliament);

C. Bills not included in category A or B which are considered suitable for a long Session starting in the spring of 1988.

If the Election is not held until the spring of 1988, we could then reconsider the position and draw up, on the basis of the proposals in categories B and C, a programme for the long first Session of the new Parliament which would follow the Election. This would doubtless include a fair number of Bills in category B on which work would have begun and which should, therefore, be ready for introduction at the beginning of the long first Session.

It may be difficult for some Departments to identify Bills in category C, and until the Manifesto is produced there must be some uncertainty about the priorities for legislation in the next Parliament. But we cannot afford to let the summer of 1987 go by without preparing some major Bills for that Parliament.

All proposals should, of course, assume an outright Conservative win at the election.

CONFIDENTIAL

I am sending copies of this minute to other members of the Cabinet, the Law Officers, the Chief Whip and the Chief Whip, Lords, and to First Parliamentary Counsel and Sir Robert Armstrong.

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

14 November 1986

Prime Minister (2)

MEA 17/11

Dear Willie,

APPROVAL OF BILLS AT LEGISLATION COMMITTEE

There have been signs at recent meetings of the Legislation Committee that colleagues are submitting Bills to the committee for approval for introduction in Parliament while important points of policy on them are still in dispute within Government. I know you share my concern about this.

Legislation Committee is not the proper forum to attempt to resolve such disputes. Its remit does not extend to considering policy issues which are for the appropriate policy Committee to decide. The function of the Committee is rather to ensure that the Bill is in a fit state for introduction and to consider Parliamentary handling. I appreciate that the original policy clearance given to measures in Bills is often necessarily in general terms and that subsequent translation into precise legal provisions inevitably raises additional detailed points which it would be tedious to refer back in every instance to the original policy Committee. I consider, however, that colleagues can overcome this problem by ensuring adequate consultation with the other Ministers directly concerned as detailed points emerge in the course of preparation of a Bill.

I would be grateful if colleagues responsible for Bills would see that this practice is followed. With good planning I do not believe this need delay Bills coming forward to Legislation Committee. I must also warn colleagues, however, that where important matters do remain outstanding then, unless there are compelling reasons to the contrary or the issue is one which can be resolved by subsequent amendment to the Bill without undue Parliamentary difficulty, Legislation Committee will be forced to reject the Bill until such time as the matters can be resolved out of the Committee.

I am copying this letter to the Prime Minister, all Cabinet colleagues, other Ministers in charge of departments, other members of Legislation Committee, to the First Parliamentary Counsel and to Sir Robert Armstrong.

Yours

John Biffen

JOHN BIFFEN

Rt Hon Viscount Whitelaw CH MC DL
Lord President of the Council

D10

CRG

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

10th November, 1986.

Dear Mr Rennie

CRIMINAL JUSTICE BILL

As you know the Bill was considered by Legislation Committee last week. The Committee approved introduction in the House of Commons this week and this is to confirm that we should be grateful if you would arrange for notice of presentation to be Tabled on Wednesday, 12 November for introduction of the Bill on Thursday, 13 November. We should like the Bill published on Friday, 14 November at 9.30 am.

The Bill should be presented by Mr Secretary Hurd, supported by:

The Prime Minister
Mr Secretary Howe
Mr Secretary Edwards
Mr John MacGregor
Mr Secretary Rifkind
Mr Secretary Channon
Mr Attorney-General
Mr David Mellor

The Home Secretary is holding a Press Conference at 10.30 am on the day of publication and I should be grateful if you would arrange for 115 copies of the Bill, addressed to the Home Secretary, to be delivered to the Vote Office for collection at the time of publication.

I am sending copies of this letter to Mark Addison (Prime Minister's Office), Mike Eland (Cabinet Office), Alison Smith (Lord Privy Seal's Office), Murdo Maclean (Chief Whip's Office, Commons), Rhodri Walters (Chief Whip's Office, Lords) and Brian Shillito.

Yours sincerely

Acton

J F ACTON
Parliamentary Clerk
(Tel. 213 4170)

J D M Rennie Esq

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 6169

MO 21/1L

31st October 1986

MBPM

Dear Richard,

UPDATING OF SCHEDULE I TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for sending me a copy of your letter of 9th October to John Biffen.

I am content that you should proceed with your proposals, including that to increase the "de minimis" level to £5,000. I can confirm that the amendments proposed by the Ministry of Defence (on the detail of which we have some comments which have been passed to the MPO at official level) are necessary and will not affect any sitting MP or MEP.

I am copying this letter to Cabinet colleagues.

Yours ever,
George.

George Younger

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office

PARLIAMENT
LEGISLATION
PTIS

CONFIDENTIAL

CLB/LP

1. MEA
2. Prime Minister

PRIME MINISTER

LEGISLATIVE PROGRAMME 1986/87

As I said at MISC 122 yesterday, there have been a number of further bids recently and this minute summarises how we stand.

2. Room was found for a Teachers' Pay Bill by dropping the Intellectual Property Bill. I am sure that we must stop substantial parts of this measure creeping back into the programme but my office will be explaining to yours that a very limited Bill on licences of right would be perfectly possible for a Private Member.

See letter attached

3. Nicholas Ridley's bid for an urgent Bill on the definition of Local Government Total Expenditure is, I am afraid, quite unavoidable. If, as seems likely, it is not a Money Bill, it will undoubtedly take time in the Lords.

4. Lastly, Nigel Lawson has asked for a new Bill to enable advance revenue tax repayments to the North Sea Oil industry.

5. I am not optimistic about the prospects of identifying another measure that could be dropped: there is no obvious candidate. We must therefore recognise that the programme will be heavier than we might have wished. In particular, it will now be loaded with controversial measures that need to be introduced and taken through both Houses quickly. Coming on top of the present acknowledged overloading in the Lords, this will make obvious difficulties there.

6. I am not suggesting at this point that we need to drop any further Bills or that the Queen's Speech needs to be altered. But I am concerned at the weight of what we are taking on next

Session and I should be very grateful if we could have a word about this when we meet on Monday together with the Lord Privy Seal and the Chief Whip, to whom I am sending a copy of this minute.

Privy Council Office
30 October 1986

SWYDDFA GYMREIG
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-233 3000 (Swits fwrdd)
01-233 6106 (Llinell Union)

Oddi wrth Ysgrifennydd Gwladol Cymru

WELSH OFFICE
GWYDYR HOUSE
WHITEHALL LONDON SW1A 2ER
Tel. 01-233 3000 (Switchboard)
01-233 6106 (Direct Line)

From The Secretary of State for Wales

The Rt Hon Nicholas Edwards MP

30 October 1986

Dear Richard

UPDATING OF SCHEDULE I TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for sending me a copy of your letter of 9 October to John Biffen about proposed amendments to the House of Commons Disqualification Act.

Together with the Minister of Agriculture I have a direct interest in the Agricultural Wages Committees. I am content that the Chairmen and Members of these Committees should be removed from the Schedule. In Wales this will result in 17 Committees being released from disqualification. I confirm that the amendment is necessary and will not affect the position of any sitting MP or MEP. I am also content for the "de minimis" level to be increased to £5,000 per annum. More generally, I agree to the updating of the Schedule to the Act this December.

I am copying this letter to Cabinet colleagues.

Yours ever

Nic

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Management and Personnel Office
Great George Street
LONDON
SW1P 3AL

PARLIAMENT: Legislation: PCS.

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213.....
Switchboard 01-213 3000 GTN Code 213
Facsimile 01-213 5465 Telex 915564

29 October 1986

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Great George Street
London
SW1P 3AL

Dear Richard.

UPDATING OF SCHEDULE 1 TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for sending me a copy of your letter of 9 October to John Biffen about the proposed amendments to Schedule 1 of the House of Commons Disqualification Act.

I agree with what you propose. The amendment proposed by my Department is correctly set out in Annex A to your letter and the explanation in Annex B is satisfactory. The amendment affects no sitting MP or MEP.

The Chairman of the new National Council for Vocational Qualifications should be disqualified under the Act and my officials will be in touch with yours about this.

I am copying this letter to Cabinet colleagues.

Yours ever,

Norman

PARLIAMENT Legislation PRIS

Ministry of Agriculture, Fisheries and Food
Whitehall Place London SW1A 2HH

From the
Minister of State

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Management and Personnel Office
Great George Street
LONDON
SW1P 3AL

21 October 1986

Dear Richard.

UPDATING OF SCHEDULE 1 TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

I am responding to the copy you sent Michael Jopling of your letter of 9 October to John Biffen.

I agree to the updating of the Schedule in December, and to your proceeding with the drafting of the necessary Order in Council and Resolution.

I also agree to the raising of the 'de minimis' level from £4,000 to £5,000.

I confirm that the amendments proposed by my Ministry are necessary and will not affect any sitting MP or MEP. There are no further amendments that I would wish to see made.

Yours ever

JOHN SELWYN GUMMER

SECRETARY OF STATE FOR SCOTLAND

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Great George Street
LONDON
SW1P 3AL

27 October 1986

PPBM

Dear Minister

UPDATING OF SCHEDULED 1 TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for sending me a copy of your letter of 9 October to John Biffen.

I agree to the updating of the Schedule in December and to your proceeding with the drafting of the necessary Order in Council and Resolution. I also agree that, for the reasons set out in your letter, the "de minimis" level should be raised from £4,000 to £5,000.

I confirm that the only amendment relating to Scotland, ie the reference to an Assistant Boundary Commissioner appointed under the House of Commons (Redistribution of Seats) Act 1949, is necessary. I also confirm that, as a Forestry Minister, I am content with the proposal to remove disqualification from the office of part-time Forestry Commissioner. None of these changes affects the position of a sitting MP or MEP.

Finally, I have no comments on the draft explanatory notes.

I am sending copies of this letter to the recipients of yours, that is, to Cabinet colleagues, and to Sir Robert Armstrong.

Yours sincerely

Andy Rifkind

MALCOLM RIFKIND

Approved by the Secretary of State and signed in his absence

HMP30016

PARLIAMENT
LEGISLATION
PT 15

CCDC

PRIVY COUNCIL OFFICE

WHITEHALL. LONDON SW1A 2AT

CDI
27/X.

24 October 1986

Dear John,

COMMAND PAPER: DOCUMENTS OF THE STOCKHOLM CONFERENCE

Thank you for your letter of 22 October. I confirm that we have no objection to publication.

I am copying this letter to Mark Addison and Chris Roberts.

Yours,
Alison

ALISON SMITH
Private Secretary

J G Rice Esq
Parliamentary Clerk
Foreign and Commonwealth Office

PARLIAMENT

LEGISLATION

PTTS

CONFIDENTIAL

NBM at this stage

PRIME MINISTER **24 October 1986**

DRUGS: LICENCE OF RIGHT

In theory, drug companies enjoy 20 years of patent protection just like other businesses. In practice, it now takes up to of 12 years to develop and test a drug. Moreover, for the last four years of its life a rival company has the right to apply to the patent court for a licence to produce the patent-protected drug. That means that drug companies may face only 4 years of full patent protection. So the Government has proposed removing the licence of right provision for drugs and so extending effective patent life to at least 8 years. That is one of the reasons why our relations with the drug companies have begun to improve after hitting a damaging low point earlier in the year.

The licence of right provision was tacked on to the DTI's Intellectual Property and Innovation Bill scheduled for the next Parliamentary session. Viscount Whitelaw has now decided that the legislative programme will be over-burdened unless the Bill goes. If we lose the licence of right provision there will be a major outcry from British and American drug companies. It will undo all the achievements of the past few months. The DTI, who do not sponsor the industry, fail to appreciate the damage that will be done.

Obviously one accepts Viscount Whitelaws's judgement that there is no space for the whole Bill, most of which concerns elaborate reform of copyright law. But surely a one clause government measure simply repealing the current licence of right arrangement could be squeezed in. The DTI are reluctant to propose this because they are not responsible for the drugs industry and would have to explain why this particular part of the Bill got priority over other sections.

A private members Bill may be another possibility. But that is not something we can rely on and the Government doesn't get the credit.

I recommend that you ask Viscount Whitelaw whether it would be possible to squeeze in a very short Bill on licence of right whilst still sacrificing the bulk of the proposed Intellectual Property Bill.

David Willetts

DAVID WILLETTS

CC&G

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

MEA

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Management and Personnel Office
Great George Street
LONDON
SW1P 3AL

24 October 1986

Dear Richard

Heath MEA

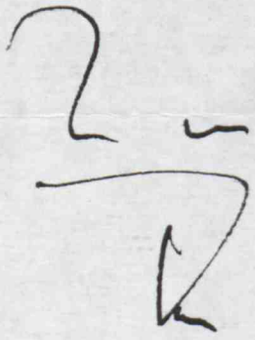
UPDATING OF SCHEDULE 1 TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

I have seen your letter of 9 October to John Biffen setting out your proposals for updating Schedule 1 to the House of Commons Disqualification Act 1975. I agree that there is a need for the schedule to be updated and am content for this to proceed as you suggest.

There are two small amendments which I would be grateful to have incorporated in the Annexes to your letter. In Part III of Schedule 1, in the list of entries to be omitted (page 4 of Annex A), I would ask that the "Commissioner or Assistant Commissioner appointed under Section 50(1) or (2) of, or Schedule 4 to, the Local Government Act (NI) 1972" should be deleted, thereby leaving the holders of these appointments - that is, the members of the Local Government Boundaries Commission - disqualified. It is clearly important that the Commissioner and Assistant Commissioners should be seen to be politically neutral, and although the Commission is not functioning at present, it must be reconstituted in 1992 and could be reconstituted earlier if an interim review were required. It seems unnecessarily complicated to remove and replace these office-holders from the list of disqualified posts as and when the Commission is active. (This amendment would require the deletion of note 35 in Annex B).

The note relating to the Boundary Commissioners (note 46 in Annex B) should include the Northern Ireland Office, as a sponsor alongside the Home Office and the Scottish Office.

I am copying this to members of the Cabinet and Sir Robert Armstrong.



TK

ji

CCBG

CF - file please.

HOME SECRETARY

QUEEN ANNE'S GATE
LONDON SWIH 9AT

24 October 1986

PARLIAMENT: Legislative Programme pt 15 with MEA 24/10/86.

Dear Richard, file with MEA

Thank you for sending me a copy of your letter of 9 October to John Biffen about your proposals for amending Schedule 1 to the House of Commons Disqualification Act 1975.

I can confirm that I am content with the amendments relating to the Parole Board and with your proposal to increase the "de minimis" level to £5,000. There are no other amendments I wish to be made.

I am copying this letter to John Biffen and the other recipients of your letter.

Yours,

Douglas

The Rt Hon Richard Luce, MP

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

OUR REF : JM/PSO/12340/86

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Whitehall
LONDON SW1

23 October 1986

Dear Richard,

UPDATING OF SCHEDULE 1 TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for your letter of 9 October.

I am quite content with what you propose and confirm that there are no further amendments to be made at present in respect of offices sponsored by my Department. You might like to note, however, that two changes are anticipated in the next year or two:

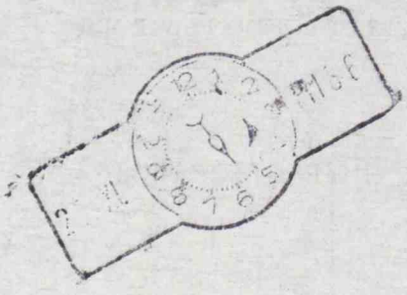
(i) to omit the British Airways Board following privatisation (provision to amend the 1975 Act was taken in the Civil Aviation Act 1980); and

(ii) to omit the Pilotage Commission once the forthcoming Pilotage Bill is enacted. That Bill also includes a provision to amend the 1975 Act.

Copies of this letter go to all members of the Cabinet.

JOHN MOORE

PARLIAMENT Legislation PT15



017/1282

CJBG

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Government Offices
Great George Street
London
SW1P 3AL

23rd October 1986

Dear Richard,

UPDATING OF SCHEDULE I TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for your letter of 9 October.

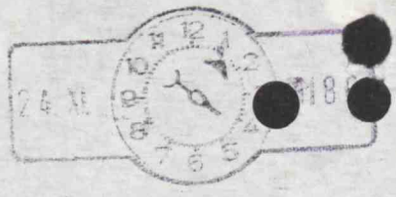
I agree that Schedule I should be updated and I am content with the amendments and explanatory notes covering the Treasury and Inland Revenue; no sitting MP or MEP is affected. You are, I am sure, aware that Schedule I was amended by the Building Societies Act to cover Building Society Commissions. I am also content that the "de minimus" level should be raised from £4,000 to £5,000.

I am copying this letter to Cabinet colleagues.

Yours ever,

JOHN MacGREGOR

Parliament; legislative prog PTIS.



SECRETARY OF STATE FOR ENERGY
THAMES HOUSE SOUTH
MILLBANK LONDON SW1P 4QJ
01 211 6402

MGA

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Great George Street
London
SW1P 3AL

22 October 1986

UPDATING OF SCHEDULE 1 TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for sending me a copy of your letter of ~~9~~ October to John Biffen. WITH MGA?

I am content with your proposal to update the Schedule to the Act in December and I agree that it would be sensible to raise the "de minimis" level to £5,000.

I can also confirm that the amendments of interest to this Department in Annex A are necessary and will not affect the position of any sitting MP or MEP.

I am copying this reply to all members of the Cabinet.

PETER WALKER

010

CU86

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

21 October 1986

Dear Willie

LEGISLATION TO CLOSE THE EDUCATION POOLS FOR 1981/82

Kenneth Baker copied to me his letter of 9 October about the need for ad hoc legislation to close the 1981/82 Education Pools.

I accept the need for such legislation which I note should not be controversial. However, Kenneth Baker 's suggestion that the necessary powers should be taken in one of the two Local Government Bills agreed for next Session raises some difficulties.

I could not agree to include the provisions in the Local Government Finance Bill, which will deal with grant recycling. QL Committee asked us to ensure so far as possible that this Bill will be a Money Bill and be ready for introduction on 12 November. I do not wish to jeopardise the position in this respect.

If the provisions were to be included in the main Local Government Bill, dealing with competition and advance and deferred purchase schemes, then the scope of that Bill would be widened to inlcude Rate Support Grant matters. This would give the Opposition further opportunity to delay what will in any event be a controversial measure, and, as you are aware, we need Royal Assent by 31 July to give authorities time to prepare for the competition aspects to apply from the beginning of 1988/89.

I gather that Kenneth Baker will be able to meet the points Quintin Hailsham made in his letter of 13 October. That being so, my preference would be for Kenneth Baker to take the necessary powers in legislation of his own. If this is not possible then I would reluctantly be prepared to consider including the provisions in the main Local Government Bill, but we should all be aware of the risks before reaching a final decision.

I am copying this to the members of H Committee as well as those of QL and E(LA), and to Sir Robert Armstrong and Sir George Engle.

Yours ever

Nicholas

NICHOLAS RIDLEY

010

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

20 October 1986

Mgk

Mgk

to publish 1995?

Dear Richard,

UPDATING OF SCHEDULE 1 TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Thank you for your letter of 9 October about the attached proposed updating of the Schedule to the House of Commons Disqualification Act 1975. I am quite content with what you propose.

I am copying this letter to Cabinet colleagues.

Yours

John

JOHN BIFFEN

Rt Hon Richard Luce MP
Minister of State,
Privy Council Office
GOGGS

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

Mark Addison Esq
Private Secretary
10 Downing Street
LONDON SW1

20 October 1986

Dear Mark,

WHITE PAPER ON MARINE PILOTAGE

We are proposing to introduce our Marine Pilotage Bill early in the new Session of Parliament. The Secretary of State has asked me to say that he considers that it would be useful to publish at the same time as the Bill, a White Paper explaining the provisions of the Bill, listing the harbour authorities which are likely to have pilotage responsibilities placed upon them and setting out the terms of compensation which will be available to pilots who will be surplus when the new arrangements for pilotage to be introduced by the Bill are implemented. We shall be clearing the draft of the White Paper will colleagues in MISC 19.

Yours ever,

Jon.

JON CUNLIFFE
Private Secretary

Prime Minister (4)

Just to note the proposal to increase the 'de minimis' level from £4,000 to £5,000.

MEA 24/10

Cabinet Office

MANAGEMENT AND PERSONNEL OFFICE

From the Minister of State
Privy Council Office
The Rt. Hon. Richard Luce MP

Great George Street
London SW1P 3AL
Telephone 01-233 8610

The Rt Hon John Biffen MP
Lord Privy Seal
68 Whitehall
London SW1

9 October 1986

Dear Lord Privy Seal,

UPDATING OF SCHEDULE I TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

Schedule 1 to the above Act lists the offices whose holders are disqualified for membership of the House of Commons. The Schedule was last updated in July 1985. Since then discussions at official level have brought to light 52 amendments. We should like to be in a position to submit the relevant documents to the Privy Council meeting planned for 16 December, and to put a Resolution and amending Order before Parliament in early November, to be debated early in December.

The question of which offices disqualify for membership of the Commons is a matter for the 'sponsor' Minister, but the MPO is responsible for the maintenance of the Act and I will be seeing the Order through the House.

Offices generally attract disqualification if one or more of the following criteria are met:

the office is an office of profit in the gift of the Crown or Ministers. This includes salaried, pensionable and certain fee-paid posts, but excludes posts attracting expenses alone. In order to avoid trivial disqualification, there is a 'de minimis' level which has been £4,000 since 1983;

- certain positions of control in companies in receipt of Government grants and funds to which Ministers usually, though not necessarily, make nominations;

- offices imposing duties which, with regard to time and place, would prevent their holders from fulfilling Parliamentary duties satisfactorily ie they would take up too much time or otherwise prevent an MP from attending Parliament;

- offices whose holders are required to be, or to be seen to be, politically impartial.

Where only the last two criteria are relevant it is often possible to cover these in the office holder's terms and conditions of appointment rather than in a statutory disqualification. Since our aim must be to keep the number of people disqualified to a minimum I am keen that we should do this wherever possible.

The 'de minimis' level, below which disqualification is not seen as necessarily appropriate, was originally set at £500 in 1957 and was periodically uprated in line with inflation until 1983 when it was £4,000. It has not been changed since then and when the Schedule was last updated in 1985, Mr Hayhoe undertook to reconsider the level. I believe there is a good case for now increasing the 'de minimis' level to £5,000 on the following grounds: adjusting the 1983 figure up to early 1986 in line with the retail price index would give £4,700; adjusting over the same period in line with average earnings would give £4,900; there is some evidence that earnings of board members and senior executives have gone up faster than average earnings. Although these factors are clearly relevant, there is no overriding reason why the 'de minimis' level should be adjusted strictly in line with the RPI or any other index. The limit is an administrative device to prevent trivial disqualification and was originally equivalent to between one quarter and one third of an MP's salary. MPs currently earn about £18,000 and a 'de minimis' level of £5,000 would seem appropriate. My officials have consulted officials in other departments and established that changing to this figure seems unlikely to cause any problems.

My purpose in writing to you and other colleagues is:

(a) to seek your agreement generally to updating the Schedule to the Act this December;

(b) to seek agreement from yourself and colleagues to raising the 'de minimis' level from £4,000 to £5,000;

(c) subject to any comments from colleagues, to agree that we should proceed with the drafting of the necessary Order in Council and Resolution, and that I should instruct Parliamentary Counsel for that purpose;

(d) to seek confirmation from colleagues concerned that the amendments proposed by their Departments - see Annex A -are necessary and will not affect the position of any sitting MP or MEP;

(e) to seek confirmation from other colleagues that they have no further amendments, additions or deletions that they wish to see made.

We undertook during the February 1982 debate to ensure that in future each proposed amendment would be supported by an explanatory note on the origin and effect of the amendment so that the House knows what it is voting on. In the July 1985 debate, Mr Douglas Hogg asked that the explanatory notes should indicate which criteria applied to each office. As far as possible, we have tried to comply with this request in the draft explanatory notes attached at Annex B. I should be grateful for any comments that sponsor Ministers may have on these. As in previous years we propose to draw MPs' attention to the existence of the note by means of a written PQ, making copies available from the Vote Office.

I am copying this letter to all members of the Cabinet and would appreciate replies by 24 October.

Yours sincerely

Paul Channon

pp RICHARD LUCE (approved by the Minister and signed in his absence)

Office of Arts and Libraries

A

AMENDMENTS TO SCHEDULE 1 TO THE HOUSE OF COMMONS DISQUALIFICATION ACT 1975

PART I OF SCHEDULE 1

Entry Omitted

1. The following entry shall be omitted:-

Umpire or Deputy Umpire appointed for the purposes of section 43 of the National Service Act 1948.

PART II OF SCHEDULE 1

Entries omitted

2. The following entries shall be omitted:-

The Advisory Board for the Research Councils

The Forestry Commission

The Livestock Marketing Commission for Northern Ireland

The Mental Health Review Tribunal for Northern Ireland

The National Consumer Council

The National Enterprise Board

The National Research and Development Corporation

The Northern Ireland Fishery Harbour Authority

The Parole Board constituted under section 59 of the Criminal Justice Act 1967

The Review Board for Government Contracts

The Staff Commission established under section 7 of the Greater London Council (General Powers) Act 1979.

Other amendments

3. (1) In the entry "A Medical Board or Pneumoconiosis Medical Board constituted for the purposes of Part III of the Social Security Act 1975 or Part III of the Social Security (Northern Ireland) Act 1975, including any panel constituted for the purposes of any such Board" delete "Pneumoconiosis" and substitute "Respiratory Diseases".

PART III OF SCHEDULE 1

Additional entries

4. The following entries shall be inserted at the appropriate places:-

Chairman of the Advisory Board for the Research Councils

Chairman of the British Library Board

Chairman of the Economic and Social Research Council

Chairman and full-time members of the Forestry Commission

Chairman and Deputy Chairman of the General Consumer Council for Northern Ireland

Chairman, in receipt of remuneration, of the Historic Buildings and Monuments Commission

Chairman of the Letchworth Garden City Corporation

Chairman of the Livestock Marketing Commission for Northern Ireland

Chairman of the London and Metropolitan Staff Commission

Chairman of the Mental Health Commission for Northern Ireland

Chairman and Deputy Chairman of the National Consumer Council

Chairman of the National Enterprise Board and National Research Development Corporation

Chairman of the Natural Environment Research Council

Chairman of the Parole Board constituted under section 59 of the Criminal Justice Act 1967.

Chairman of the Science and Engineering Research Council

Director of Royal Ordnance p.l.c.

Member of a panel of persons appointed under Schedule 5 to the Rent (NI) Order 1978 to act as Chairman and other members of rent assessment committees

Entries Omitted

5. The following entries shall be omitted:-

Chairman of the Dental Committee of the Northern Ireland Central Services Agency for the Health and Social Services

Chairman of the Domestic Coal Consumer Council

Chairman of the tribunal constituted under section 463 of the Income and Corporation Taxes Act 1970

Chief Executive of the National Enterprise Board

Commissioner or Assistant Commissioner appointed under section 50(1) or (2) of, or Schedule 4 to, the Local Government Act (Northern Ireland) 1972

Director of Britoil p.l.c. nominated by a Minister of the Crown or government department

Director of Cable and Wireless Public Limited Company nominated by a Minister of the Crown or government department

Director of the Cereals Committee Limited appointed by a Minister of the Crown or government department

Director of any company in receipt of financial assistance under section 5 of the Films Act 1985, being a director appointed by a Minister of the Crown or government director

Director of the successor company within the meaning of Part V of the Telecommunications Act 1984, being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown

Industrial Assurance Commissioner or Deputy Industrial Assurance Commissioner appointed under the Industrial Assurance (Northern Ireland) Order 1979

Member appointed by the Head of the Department of Agriculture for Northern Ireland of the Agricultural Wages Board for Northern Ireland

Any member of the British Library Board in receipt of remuneration

Any member, in receipt of remuneration, of the Historic Buildings and Monuments Commission

Member of the Board of the Royal Ordnance Factories

Other amendments

6.(1) In the entry "Boundary Commissioner or Assistant Boundary Commissioner appointed under part I or Part II of Schedule 1 to the House of Commons (Redistribution of Seats)Act 1949" amend "Assistant Boundary Commissioner" to read "Assistant Commissioner".

(2) In the entry "Chairman of the Police Authority for Northern Ireland" after "Chairman" there shall be inserted "or Vice-Chairman".

(3) The entry "Chairman of any of the Post Office Users' Councils established under section 14 of the Post Office Act 1969" shall be amended to read "Chairman of the Post Office Users' National Council established under section 14 of the Post Office Act 1969".

(4) In the entry "Chairman of the Prescription Pricing Agency" for "Agency" there shall be substituted "Authority".

(5) The entry "Director of British Telecommunications p.l.c. appointed by a Minister of the Crown or government department" shall be amended to read "Director of British Telecommunications p.l.c. appointed or nominated by HM Government".

(6) The entry "Member appointed by a Minister of the Crown of the Agricultural Wages Board for England and Wales or of an agricultural wages committee established under the Agricultural Wages Act 1948, or Chairman of such a Committee "shall be amended to read "Member appointed by a Minister of the Crown of the Agricultural Wages Board for England and Wales under the Agricultural Wages Act 1948."

(7) In the margin to the left of the entry "Director General of Telecommunications "there shall be added "1984 c.12".

Office of Arts and Libraries

B-

PART I - JUDICIAL OFFICERS

Entry omitted

1. **Entry to be deleted: Umpire or Deputy Umpire appointed for the purposes of section 43 of the National Service Act 1948**

The National Service Act 1948 has been repealed and the relevant Act is now the Reserve Forces (Safeguard of Employment) Act 1985. For the purposes of hearing appeals from Reinstatement Committees under section 9 of that Act, Her Majesty may appoint an umpire and one or more deputy umpires. These offices are salaried, the salaries being paid from public funds.

There have been no appointments to these posts for many years. If it became necessary to make an appointment disqualification could be applied administratively until such time as an entry could again be included in the Schedule.

The deletion nominally removes one umpire and one deputy umpire from the Schedule.

Sponsored by the Department of Employment.

PART II - BODIES OF WHICH ALL MEMBERS ARE DISQUALIFIED

Entries to be deleted

2. **Entry to be deleted: The Advisory Board for the Research Councils**

Entries referring to the Chairman of the Advisory Board for the Research Councils, the Economic and Social Research Council, the

Natural Environment Research Counciland the Science and Engineering Research Council are proposed for addition to Part III. (See nos. 14, 16, 26, 28). Their disqualification is attributable properly to their paid Ministerial appointments as heads of individual Research Councils (receiving £10,550; £34,000; £43,500; £43,717 pa respectively) rather than membership of ABRC for which they are not separately remunerated. Ordinary members are either unpaid or receive less than £5,000 pa.

21 Office holders will be released from disqualification in this Part of the Schedule.

Sponsored by the Department of Education and Science.

3. **Entry to be deleted: The Forestry Commission**

An entry referring only to the Chairman and full-time members of the Forestry Commission is proposed for addition to Part III. (See no. 17). It is proposed that six part-time Forestry Commissioners be released from disqualification since it is considered that their duties are not sufficient to prevent them fulfilling Parliamentary duties.

11 Office holders will be released from disqualification in this Part of the Schedule.

Sponsored by the Forestry Commission

4. **Entry to be deleted: The Livestock Marketing Commission for Northern Ireland**

An entry referring only to the Chairman of the Commission is proposed for addition to Part III. (See no.21) Ordinary members receive less than £5,000 pa. It is considered that their duties are not sufficient to prevent them fulfilling Parliamentary duties.

Six office holders will be released from disqualification.

Sponsored by the Department of Agriculture, Northern Ireland.

5. **Entry to be deleted: The Mental Health Review Tribunal for Northern Ireland**

Chairman and members receive less than £5,000 pa. It is also considered that their duties are not sufficient to prevent them fulfilling Parliamnentary duties.

Six office holders will released from disqualification.

Sponsored by the Department of Health and Social Services, Northern Ireland.

6. **Entry to be deleted: The National Consumer Council**

An entry referring only to the Chairman and Deputy Chairman of the National Consumer Council is proposed for addition to Part III (See no. 24).

Ordinary members receive less than £5,000 pa.

18 office holders will be released from disqualification in this Part of the Schedule.

Sponsored by the Department of Trade and Industry.

7. **Entry to be deleted: The National Enterprise Board**

An entry referring to the Chairman of the National Enterprise Board and the National Research and Development Corporation is proposed for addition to Part III. (See no. 25). The members of the NEB receive less than £5,000 pa.

Ten office holders will be released from disqualification in this Part of the Schedule.

Sponsored by the Department of Trade and Industry

8. **Entry to be deleted: The National Research and Development Corporation**

An entry referring to the Chairman of the National Enterprise Board and the National Research and Development Corporation is proposed for addition to Part III. (See no.25). The members of the NRDC receive less than £5,000 pa.

Twelve office holders will be released from disqualification in this Part of the Schedule.

Sponsored by the Department of Trade and Industry.

9. **Entry to be deleted: The Northern Ireland Fishery Harbour Authority**

Chairman and members receive less than £5,000 pa. It is considered that the members' duties are not sufficient to prevent the fulfilling Parliamentary duties.

Six office holders will be released from disqualification.

Sponsored by the Department of Agriculture, Northern Ireland.

10. **Entry to be deleted: The Parole Board constituted under section 59 of the Criminal Justice Act 1967.**

An entry referring only to the Chairman of the Parole Board is proposed for addition to Part III (See no. 27). It is considered that members' disqualification is better effected through the terms and conditions of their appointment.

52 office holders will be released from disqualification in this Part of the Schedule.

Sponsored by the Home Office.

11. **Entry to be deleted: The Review Board for Government Contracts**

Chairman and members are disqualified through the terms and conditions of their appointment.

Five office holders are released from statutory disqualification.

Sponsored by the Ministry of Defence.

12. **Entry to be deleted:** The Staff Commission established under section 7 of the Greater London Council (General Powers) Act 1979.

This body was abolished on 30 June 1986.

Three office holders will be released from disqualification.

Sponsored by the Department of the Environment.

Other amendments

13. In the entry "A Medical Board or Pneumoconiosis Medical Board constituted for the purposes of Part III of the Social Security Act 1975 or Part III of the Social Security (Northern Ireland) Act 1975, including any panel constituted for the purposes of any such Board" delete "Pneumoconiosis" and substitute "Respiratory Diseases".
The amendment accurately reflects the new title of the Board.

No office holders are brought into the Schedule by this amendment.

Sponsored by the Department of Health and Social Security.

PART III - OTHER DISQUALIFYING OFFICES

Additional entries

14. **New entry: Chairman of the Advisory Board for the Research Councils**

(See no. 2)

The proposed new entry will bring one office holder into this Part of the Schedule.

Sponsored by the Department of Education and Science

15. **New entry: Chairman of the British Library Board**
(see no.43).
Sponsored by the Office of Arts and Libraries.

16. **New entry: Chairman of the Economic and Social Research Council.**

(See no.2)

The proposed new entry will bring one office holder into this Part of the Schedule.

Sponsored by the Department of Education and Science.

17. **New entry: Chairman and full-time members of the Forestry Commission**

(See no. 3)

The proposed new entry will bring five office holders into this Part of the Schedule.

Sponsored by the Forestry Commission.

18. **New entry: Chairman and Deputy Chairman of the General Consumer Council for Northern Ireland**

Appointments are made under the General Consumer Council (Northern Ireland) Order 1984 by the Head of the Department of Economic Development. The Chairman and Deputy Chairman receive £11,515 and £10,365 pa respectively.

The proposed new entry will bring two office holders into the Schedule.

Sponsored by the Department of Economic Development, Northern Ireland.

19. New entry: Chairman, in receipt of remuneration, of the Historic Buildings and Monuments Commission

(See no.44).

The proposed new entry will bring two office holders into the Schedule.

Sponsored by the Department of the Environment.

20. New entry: Chairman of the Letchworth Garden City Corporation

The office was established under section 5 of the Letchworth Garden City Corporation Act 1962. The Chairman is appointed by the Secretary of State and receives £15,642 pa.

The proposed new entry will bring one office holder into the Schedule.

Sponsored by the Department of the Environment.

21. **New entry: Chairman of the Livestock Marketing Commission for Northern Ireland.**

(see no. 4)

The proposed new entry will bring one office holder into the Schedule.

Sponsored by the Department of Agriculture, Northern Ireland.

22. **New entry: Chairman of the London and Metropolitan Government Staff Commission**

The office was established under the Local Government (Interim Provisions) Act 1984. The Chairman is appointed by the Secretary of State and receives £14,000 pa.

The proposed new entry will bring one office holder into the Schedule.

Sponsored by the Department of the Environment.

23. **New entry: Chairman of the Mental Health Commission for Northern Ireland**

This office was established under the Mental Health Order 1986(NI). The Chairman is appointed by the Head of the Department with the agreement of the Secretary of State. He receives £5,490 pa.

The proposed new entry will bring one office holder into the Schedule.

Sponsored by the Department of Health and Social Services, Northern Ireland.

24. **New entry: Chairman and Deputy Chairman of the National Consumer Council**

(See no. 6).

The proposed new entry will bring two office holders into this Part of the Schedule.

Sponsored by the Department of Trade and Industry.

25. **New entry: Chairman of the National Enterprise Board and the National Research and Development Corporation**

This entry replaces "The National Enterprise Board" and "The National Research and Development Corporation" in Part II and "Chief Executive of the National Enterprise Board" in Part III. Although provided for in legislation, the latter post no longer exists as such. Since 1981 the British Technology Group has had a combined post of Chief Executive for the NEB and the NRDC. The most recent appointment was as Managing Director of NRDC (and as a member of both boards). He received £52,000 pa and is appointed by the Secretary of State.

(See nos 7,8,34).

The proposed new entry will bring one office holder into the Schedule

Sponsored by the Department of Trade and Industry.

26. **New entry: Chairman of the Natural Environment Research Council**

(See no. 2)

The proposed new entry will bring one office holder into this Part of the Schedule.

Sponsored by the Department of Education and Science.

27. **New entry: Chairman of the Parole Board constituted under section 59 of the Criminal Justice Act 1967.**

(See no.10)

The proposed new entry will bring one office holder into this Part of the Schedule.

Sponsored by the Home Office.

28. **New entry: Chairman of the Science and Engineering Research Council**

(See no. 2)

The proposed new entry will bring one office holder into this Part of the Schedule.

Sponsored by the Department of Education and Science.

29. **New entry: Director of Royal Ordnance p.l.c.**

(See no. 45)

The proposed new entry will bring one office holder into the Schedule.

Sponsored by the Ministry of Defence.

30. **New entry: Member of a panel of persons appointed under Schedule 5 to the Rent (NI) Order 1978 to act as Chairman and other members of rent assessment committees**

Appointments are made by the Department of the Environment under the provisions of the Rent Order (NI) 1978. There is a requirement that appointees are seen to be politically impartial.

The proposed entry will bring 50 office holders into the Schedule.

Sponsored by the Department of the Environment, Northern Ireland.

31. **Entry to be deleted: Chairman of the Dental Committee of the Northern Ireland Central Services Agency for the Health and Social Services.**

The Chairman receives less than £5,000 per annum.

The deletion removes one office holder from the Schedule.

Sponsored by the Department of Health and Social Services, Northern Ireland.

32. **Entry to be deleted: Chairman of the Domestic Coal Consumer Council**

The Chairman receives less than £5,000 pa.

The deletion removes one office holder from the Schedule.

Sponsored by the Department of Trade and Industry.

33. **Entry to be deleted: Chairman of the tribunal constituted under section 463 of the Income and Corporation Taxes Act 1970**

The present Chairman is a judge and is thus automatically disqualified for membership of the House of Commons under Part I of Schedule 1 of the Act. Any future appointee to the post of Chairman will be barred from holding political office by the terms of the appointment. This accords with treatment proposed for members of the Tribunal.

The deletion removes one office holder from the Schedule.

Sponsored by the Board of Inland Revenue.

34. Entry to be deleted: **Chief Executive of the National Enterprise Board**

(see nos.7,8,25)

Sponsored by the Department of Trade and Industry.

35. Entry to be deleted: **Commissioner or Assistant Commissioner appointed under section 50(1) or (2) of, or Schedule 4 to, the Local Government Act (Northern Ireland) 1972**

There are no Commissioners at present. The next appointments will not be until 1992.

The deletion nominally removes three office holders from the Schedule.

Sponsored by the Department of the Environment, Northern Ireland.

36. **Entry to be deleted: Director of Britoil p.l.c. nominated by a Minister of the Crown or government department**

The Government lost its residual shareholding in Britoil in July 1985. Ministers lost the power to appoint directors when the Government's shareholding fell below 20 per cent.

The deletion removes two office holders from disqualification.

Sponsored by HM Treasury.

37. **Entry to be deleted: Director of Cable and Wireless Public Limited Company nominated by a Minister of the Crown or government department.**

Following the sale of the residual shareholding the Government has given up its right to appoint directors.

The deletion removes two office holders from disqualification.

Sponsored by the Treasury.

38. **Entry to be deleted: Director of the Cereals Committee Limited appointed by a Minister of the Crown or government department.**

The two Ministerially appointed Directors are traditionally and currently civil servants. They are therefore disqualified under section 1(b) of the Act.

The deletion removes two office holders from the Schedule.

Sponsored by the Ministry of Agriculture, Fisheries and Food.

39. **Entry to be deleted: Director of any company in receipt of financial assistance under section 5 of the Films Act 1985, being a director appointed by a Minister of the Crown or government department**

The post holder receives less than £5,000 pa.

The deletion removes one office holder from the Schedule.

Sponsored by the Department of Trade and Industry.

40. **Entry to be deleted: Director of the successor company within the meaning of Part V of the Telecommunications Act 1984, being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown.**

The "successor company" was a temporary device utilised between the passage of the 1984 Act and the privatisation of British Telecommunications to cover BT's interim status as a Government owned p.l.c.

The deletion removes one office holder from the Schedule.

Sponsored by the Department of Trade and Industry.

41. **Entry to be deleted: Industrial Assurance Commissioner or Deputy Industrial Assurance Commissioner appointed under the Industrial Assurance (Northern Ireland) Order 1979.**

These posts are held by civil servants and will continue to be so.

The deletion nominally releases two office holders from disqualification.

Sponsored by the Department of Economic Development, Northern Ireland.

42. **Entry to be deleted: Member appointed by the Head of the Department of Agriculture for Northern Ireland of the Agricultural Wages Board for Northern Ireland.**

Members' remuneration is £50 per day for independent members and £9.60 per day for others. The Chairman's remuneration is £98 per day. The Board generally meets three or four times per annum. Total remuneration is therefore well below the 'de minimis' level.

The deletion removes three office holders from disqualification.

Sponsored by the Department of Agriculture, Northern Ireland.

43. **Entry to be deleted: Any member of the British Library Board in receipt of remuneration.**

Members receive less than £5,000 pa. An entry referring only to the Chairman of the British Library Board is proposed for addition to Part III (See no. 15).

The deletion removes 13 office holders from disqualification.

Sponsored by the Office of Arts and Libraries.

44. Entry to be deleted: **Any member, in receipt of remuneration, of the Historic Buildings and Monuments Commission**

Members receive less than £5,000 pa. An entry referring only to the Chairman is proposed for addition elsewhere in Part III.

(See no.19).

The deletion removes 15 office holders from the Schedule.

Sponsored by the Department of the Environment.

45. **Entry to be deleted: Member of the Board of the Royal Ordnance Factories**

An entry referring to the Director of Royal Ordnance p.l.c. is proposed for addition to Part III to reflect the formation of the Company. The Chairman is also a Director of the Company (see no. 29).

The deletion removes eight office holders from disqualification.

Sponsored by the Ministry of Defence.

Other amendments

46. In the entry "Boundary Commissioner or Assistant Boundary Commissioner appointed under Part I or Part II of Schedule 1 to the House of Commons (Redistribution of Seats) Act 1949" to amend "Assistant Boundary Commissioner" to read "Assistant Commissioner".

This amendment reflects the correct title of the appointment.

No additional office holders are brought into the Schedule by this amendment.

Sponsored by the Home Office and Scottish Office.

47. **Amend the entry:** **Chairman of the Police Authority for Northern Ireland**

To read: **Chairman or Vice-Chairman of the Police Authority for Northern Ireland.**

The post has existed for some time but was erroneously omitted in the past. The Vice-Chairman receives £6,656 pa.

One additional office holder is brought into the Schedule by this amendment.

Sponsored by the Northern Ireland Office.

48. **Amend the entry:** **Chairman of any of the Post Office Users' Councils established under section 14 of the Post Office Act 1969**

To read: **Chairman of the Post Office User's National Council established under section 14 of the Post Office Act 1969.**

This amendment reflects a change in the title of the appointment.

No additional office holders are brought into the Schedule by this amendment.

Sponsored by the Department of Trade and Industry.

49. Amend the entry: Chairman of the Prescription Pricing Agency

To read: Chairman of the Prescription Pricing Authority

This amendment corrects an error in the title of the body.

No additional office holders are brought into the Schedule by this amendment.

Sponsored by the Department of Health and Social Security.

50. **Amend the entry: Director of British Telecommunications p.l.c. appointed by a Minister of the Crown or government department**

To read: Director of British Telecommunications p.l.c. appointed or nominated by HM Government.

The wording properly reflects the Company's Articles of Association.

No additional office holders are brought into the Schedule by this amendment.

Sponsored by the Department of Trade and Industry.

Amend the entry: Member appointed by a Minister of the Crown of the Agricultural Wages Board for England and Wales or of an agricultural wages committee established under the Agricultural Wages Act 1948, or Chairman of such a committee.

To read: Member appointed by a Minister of the Crown of the Agricultural Wages Board for England and Wales under the Agricultural Wages Act 1948.

It is considered that the Chairman of the agricultural wages committees are no longer required to be, or to be seen to be, politically impartial.

This amendment removes 89 office holders from the Schedule.

Sponsored by the Ministry of Agriculture, Fisheries and Food and the Welsh Office.

52. **In the margin to the left of the entry:** **Director General of Telecommunications**

add: 1984 c.12

The addition reflects the fact that the Director General is disqualified by Schedule 1, paragraph 5 of the Telecommunications Act 1984.

Sponsored by the Department of Trade and Industry.

CCSG

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

Telephone Direct Line 01-212 0515
Switchboard 01-212 7676

The Rt Hon John MacGregor OBE MP
Chief Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON SW1P 3AG

7 October 1986

cc. DR. SCA
DEPUTY DIR. SCA
MRS. Mc DIVITT
DRM
MR. MELDRUM SCA.
CAMW
DJSD.

N 13 PM.

Dear John,

DEBTORS (SCOTLAND) BILL

Thank you for your letter of 30 September replying to mine of 3 September about the tax aspects of my proposed implementation of the Scottish Law Commission's Report on Diligence and Debtor Protection. I am glad to have your views.

I would suggest that the best course now would be for our respective officials to get together to arrive at proposals which meet, so far as possible, our respective policy objectives. I wish to have my Bill ready for introduction early in the new Parliamentary Session and on the assumption that you will be content for us to proceed in this way I have instructed my officials accordingly.

I am copying this letter to the other members of H Committee, to Paul Channon and Sir Robert Armstrong.

Yours ever

Kenny

CAMERON OF LOCHBROOM

n6pm CeB

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

25 September 1986

Dear Nick,

DOG LICENCES

You wrote to me on 9 ~~September~~ at 7aP proposing that a straight-forward dog licence abolition Bill should be added to my approved list of handout Bills. I have also seen the letters from Quintin Hailsham and John MacGregor in support.

I agree that we should add this measure to the list and I would be grateful if you would ensure that you now instruct Parliamentary Counsel as soon as possible.

I note - without commitment - John MacGregor's point that if the Bill is not taken up we shall need to give early consideration to other legislative options.

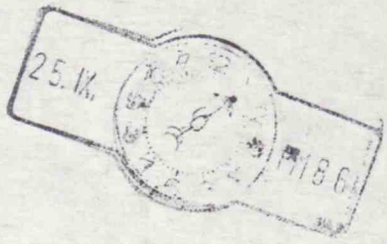
I am copying this letter to the Prime Minister, members of QL and H Committees, Michael Jopling, Paul Channon and Sir Robert Armstrong.

John Biffen

JOHN BIFFEN

Rt Hon Nicholas Ridley AMICE MP
Secretary of State for the Environment

PARLIAMENT legislation / PTIS



CONFIDENTIAL

10 DOWNING STREET

From the Principal Private Secretary 18 September 1986

During her meeting this morning with the Lord President, the Prime Minister suggested that he should give some consideration to the preparation of the legislative programme for the first session after the General Election. It was important that this programme should be exciting and not a repetition of Bills which had failed to get through in the previous session. All this needed advance planning, which should be carried out in a very restricted circle indeed.

The Lord President undertook to consider how to follow up the Prime Minister's suggestion.

N. L. WICKS

Nick Gibbons, Esq.,
Lord President's Office

CONFIDENTIAL

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CO 3/9

16pm

CHIEF SECRETARY TO THE TREASURY

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon John Biffen MP
Lord Privy Seal
Privy Council Office
68 Whitehall
London
SW1A 2AT

16 September 1986

Dear John,

DOG LICENSING

I have seen a copy of Nicholas Ridley's letter of 9 September to you about the abolition of the dog licence.

I favour early abolition and I strongly support the idea of a Private Members Bill though I recognise the possible problems of getting someone to take it on. If that is not taken up, we should need to give early consideration to the other legislative options.

I am copying this letter to the Prime Minister, members of QL and H, Michael Jopling, Paul Channon and Sir Robert Armstrong.

Yours ever,

John

JOHN MacGREGOR

CONFIDENTIAL

PARLIAMENT! Legislative Programme pt 15.

nbpm CC/85

HOUSE OF LORDS,
LONDON SW1A 0PW

16 September 1986

Dear Nicholas:

Dog Licensing

Thank you for copying to me your letter of 9 September to John Biffen.

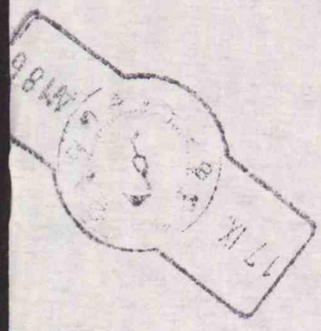
As you know, I have long suggested that abolition of the licence would be the best way of dealing with this small but tricky subject, and I therefore welcome your proposal to hand out a Private Member's Bill to this effect in this coming Session, in the hope that it will be taken up by one of our supporters.

I am copying this to the Prime Minister, members of H, Michael Jopling and Paul Channon.

Yrs:

The Right Honourable Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
London SW1P 3EB

PARLIAMGNT legislation PT15



PRIME MINISTER

THE FIRST PARLIAMENTARY SESSION AFTER THE ELECTION

When I suggested in my minute below that you should talk with the Lord President, as Chairman of QL, about the need to start planning soon for the legislative programme for the first session back after the Election, you agreed but said that we must get the policies through first.

I entirely agree. But I think that this is even more reason for the main legislative areas to be identified early on so that the policies can be prepared. Otherwise, we will find after the Election when we are framing the programme for the first session, that neither legislation is drafted, nor, even worse, policies are formulated. The crucial first session would therefore be wasted.

May I suggest that you have a brief discussion with the Lord President about this so that he can give you some preliminary advice on how to begin planning for the legislative programme for the first session back.

N.L.W.

N. L. WICKS

16 September 1986

SLHABY

CC BG

FROM THE MINISTER FOR LOCAL GOVERNMENT AND THE ENVIRONMENT

SCOTTISH OFFICE
NEW ST. ANDREW'S HOUSE
ST. JAMES CENTRE
EDINBURGH EH1 3SX

06pm

The Hon William Waldegrave MP
Minister of State for the Environment
Countryside and Local Government
Department of the Environment
2 Marsham Street
LONDON
SW1P 3EB

10 September 1986

Dear William,

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION - PROPOSED BILL 1986-87

LEGISLATION ON THE COMMISSIONERS FOR LOCAL ADMINISTRATION

I have seen a copy of Richard Luce's letter of 8 August to you about the possibility of including in the proposed Parliamentary Commissioner for Administration Bill amendments to the legislation under which the Commissioners for Local Administration (CLA) operate, and about the other options. I have also seen a copy of the letter of 29 August from Nick Edwards to Richard Luce.

It seems to me that the balance of argument is now very clearly in favour of including the CLA amendments in the Local Government Bill, and there is little more that can be said about the relative merits of the various options. There is however one further point which I think worth bearing in mind.

Although the CLA commitments are not in themselves of major importance, and there may well, as Nick Edwards suggests, be provisions deserving a higher priority, they have already been standing for some time. If this opportunity is not taken, their very lack of relative importance may make it difficult to find another vehicle for them in the reasonably near future. Further indefinite delay would be bound to damage our credibility, which has already been stretched, with the Local Ombudsmen and those who take an interest in their affairs.

SMC25106

If this additional consideration is set alongside the possibility of losing the PCA Bill, a strong case is made for including the CLA amendments in the Local Government Bill.

I am sending copies of this letter to the Prime Minister, the members of H Committee and Sir Robert Armstrong.

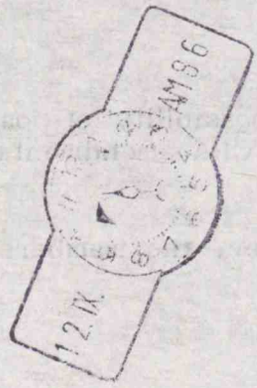
Yours

Michael

MICHAEL ANCRAM

SMC25106

PARLIAMENT legislative Prog PTTS



CONFIDENTIAL

nbpm cc BG

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon John Biffen MP
Lord Privy Seal's Office
68 Whitehall
LONDON
SW1

9 September 1986

Dear John

DOG LICENSING

Thank you for your letter of 18 July responding to mine, following up the remit I inherited from legislation on dog licensing. As you will realise, my announcement on 23 July of our intention to abolish the licence at a suitable opportunity has changed circumstances, and there is now no question of specific funding arrangements being needed.

I agree with you that there could be advantage in offering to a Private Member a Bill confined simply to abolishing the licensing requirement. I remain of the view that it is most unlikely that such a Bill would be taken up, but we would be seen to be ready to use any reasonable opportunity. Subject to colleagues' agreement, therefore, I propose that a short Bill to abolish dog licences should be added to the hand-out for the 1986/87 session.

I am copying this to the Prime Minister, Members of QL, Members of H, Michael Jopling and Paul Channon

Yours ever

Nicholas

NICHOLAS RIDLEY

Parliament: Legislation PT15

3 September 1986

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

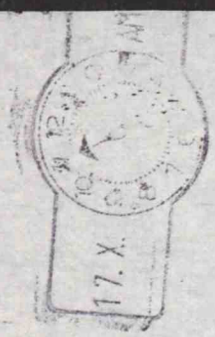
DEBTORS (SCOTLAND) BILL: DISCUSSIONS WITH THE REVENUE DEPARTMENTS

I wrote to you on 25 July seeking the approval of the Home and Social Affairs Committee for the preparation of the above Bill, subject to further consideration of certain difficulties raised by the Revenue Departments. I have now had an opportunity for further consideration of these difficulties, and wish to seek the views of colleagues on the conclusions I have reached.

The Debtors (Scotland) Bill is intended to implement recommendations contained in the Scottish Law Commission's recent Report on Diligence and Debtor Protection (Scot Law Comm No 95). The Revenue Departments opposed the Commission's proposal to apply to tax debts certain provisions giving debtors the opportunity to apply to the court for time to pay their debts. They were also concerned about certain aspects of the Commission's proposed reforms of summary warrant procedure (the principal method by which they enforce their debts), and the proposed abolition of the Crown's prior claim in third parties' diligence. The Revenue Departments' arguments are set out in the attached Annex; they were also covered in paragraphs 8 and 9 of my letter to you of 25 July, and paragraphs 11, 21, 39, 44 and 45 of the Annex to that letter. Those paragraphs and the attached Annex have been agreed with the Revenue Departments as accurately representing their views.

I appreciate the strength of the Revenue Departments' concern, and the seriousness of the difficulties they raise, particularly on the time to pay provisions. Nevertheless, I should not wish to abandon the Commission's recommendations in these areas without giving colleagues the opportunity to make a balanced assessment of the political consequences.

It will be remembered that Crown preferences attracted considerable criticism during the Parliamentary passage of the Insolvency Act 1985 and the Bankruptcy (Scotland) Act 1985. Amending the Commission's recommendations to the advantage of the Crown as creditor, and to the



disadvantage of ordinary creditors, would be likely to provoke further criticism and difficulties for the Bill in both Houses.

It would also be difficult to present a convincing case for significant departures from the Commission's recommendations, given their cogent arguments on the desirability of a uniform statutory poinding procedure for summary warrants (paragraph 7.21 et seq of the Report), and on the need to reform what they see as the anachronistic and anomalous Crown prior claim (paragraph 7.93 et seq of the report). Whatever form of poinding procedure is eventually adopted should also reflect the policy requirements of rates and community charge, which are, or will be, enforced by summary warrants as well. On consultation, bodies such as the Law Society of Scotland and the Society of Messengers at Arms and Sheriff Officers made the same sort of representations on appraisal and sale of goods as did the Revenue Departments (see paragraph 9(ii) and (iii) of the Annex). However, I considered the Commission's proposals on these particular points as central to debtor protection, and so have resisted any concessions in ordinary poindings. Concessions on the same points in summary warrant poindings would be likely to provoke heightened opposition from these bodies, and lead to avoidable difficulties in the Parliamentary passage of the Bill.

I appreciate that the Keith Committee reviewed the question of enforcement of tax debts for the United Kingdom as a whole, and came to rather different conclusions from the Commission. This raises a number of difficult issues for the Government, but I should prefer not to attempt to solve them by allowing a very different and separate system for revenue debts to emerge from our long awaited reform of this area of Scots law. However, it must be said that the Commission's proposals would result in widely differing treatment of tax debts between Scotland and the rest of the UK.

It is also worth noting here that my decision not to adopt the Commission's recommendation for Debt Arrangements Schemes (see paragraph 7 of my letter of 25 July) removed a further potential area of difficulty for the Revenue Departments.

I should add that I have noted that in his letter of 19 August, Nicholas Ridley, indicates that the English Local Authority Associations are opposed to the introduction of time to pay orders in connection with the enforcement of the Community Charge. His Department are considering whether local authorities should have a discretion to enter into such arrangements. Malcolm Rifkind and I have asked our officials to look further at all aspects of the proposed application in Scotland of time to pay arrangements to both rates and Community Charge.

I am copying this letter and the attached Annex to other members of the Committee, to Paul Channon and to Sir Robert Armstrong.

CAMERON OF LOCHBROOM

CUBG

SWYDDFA GYMREIG
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From The Secretary of State for Wales

The Rt Hon Nicholas Edwards MP

29 August 1986

Dear Richard

MBM

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (PCA) -
PROPOSED BILL 1986-87

Thank you for copying me your letter of 8 August to William Waldegrave, which again set out the options, in the light of a recent meeting of our officials.

I do not disagree with the way you respond to the 3 options for dealing with the minor and uncontroversial Government commitments for the Commissioner for Local Administration (CLA). I too favour the second option, but can well understand the pressures Nicholas Ridley is under to find space in his Bill for provisions of higher priority than the CLA.

Turning to the third option (not to include the CLA commitments in either the PCA or the Local Government Bill), I think there are significant risks that, as with the first option, controversial amendments could be put down in the House of Commons, particularly as the PCA bill would extend the PCA's jurisdiction to the non-housing functions of the New Town Development Corporations and the Development Board for Rural Wales, while no provision is made to make the proposed and complementary, and in my view more significant, extension of the CLA's jurisdiction to the housing functions of those bodies.

It seems to me that, realistically, the position may be that if Nicholas Ridley is unable to find a place in the Local Government Bill for the minor CLA amendments, the PCA Bill may lose its uncontroversial slot in the legislative programme, regrettable though that may be.

I am sending copies of this letter to the Prime Minister, the members of H Committee, other Ministers in charge of Departments and to Sir Robert Armstrong.

Yours ever

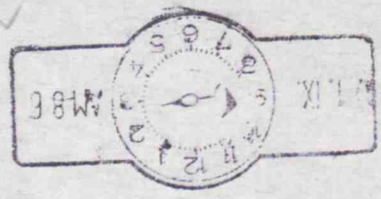
Nick

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office
Management and Personnel Office
Great George Street
LONDON SW1P 3AL

PARLIAMENT

LEGISLATION

PTTS



Cabinet Office

MANAGEMENT AND PERSONNEL OFFICE

From the Minister of State
Privy Council Office
The Rt. Hon. Richard Luce MP

Great George Street
London SW1P 3AL
Telephone 01-233 8610

The Hon William Waldegrave MP
Minister of State for the Environment
Countryside and Local Government
Department of the Environment
2 Marsham Street
LONDON SW1P 3EB

8 August 1986

Dear Willie,

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION - PROPOSED BILL 1986/7

Following our correspondence in April/May we agreed to defer a decision on whether the Parliamentary Commissioner for Administration (PCA) bill could take on 9 minor and uncontroversial government commitments relating to the Commissioner for Local Administration (CLA) until decisions on the handling of the Widdicombe report and the PCA Select Committee report on CLAs had been taken.

Officials have now met again, as we proposed. They agreed that the Government's line on the handling of the Widdicombe report was helpful (that the Widdicombe report's recommendations should be treated as a single whole; that consultations should continue until the end of 1986 and that it would thus be at least Easter 1987 before the Government's response to the report was published). They also agreed, however, that, although this "neutralised" Widdicombe for the time being as far as the Government and its supporters were concerned, it would not necessarily prevent the Opposition in either House (but particularly the House of Lords) pressing for early action.

Officials therefore concluded that, although no option was without risk, there were three possibilities -

I - to include the CLA commitments in the PCA bill

I must say straightaway that I do not consider this a viable option as it really amounts to dropping the bill. As you know

we only have a slot in the legislative timetable on the grounds that the bill is non controversial and thus suitable for Second Reading procedure. Although the existing government commitments on the CLAs are uncontroversial in themselves and separable from the subject matter in the Widdicombe and Select Committee reports, any bill including these commitments still runs the risk of controversial amendments being put down on it, not just in the House of Lords but also by the Opposition in the Commons. The bill would thus almost certainly lose its slot in the legislative programme. This seems to me regrettable for two reasons:

(a) the bill represents a welcome, if modest, reform and was supported as such by colleagues when the legislative programme was first under discussion. The government's commitment to legislate is now over a year old and some MPs on both sides of the House are beginning to ask when we intend to fulfil our commitment. It would be a pity if the bill was lost simply because of minor CLA provisions which no Minister considered important enough to bid for in their own right;

(b) loss of the bill would not ease the DOE's position because there would still be pressure to include the CLA commitments in next session's Local Government bill.

II - <u>to include the CLA commitments in the Local Government Bill</u>

This is obviously for you to consider in the first instance. There is no doubt, however, that it would be the best option from the PCA bill's point of view:

(a) it would insulate our bill against CLA amendments;

(b) it would mean the Government could not be criticised for not meeting its uncontroversial commitments although we would need to remain firm on no early action on Widdicombe;

(c) the PCA bill will extend the PCA's jurisdiction to the non-housing functions of New Town Development Corporations. It would obviously be neater if legislation was also enacted in parallel extending the CLAs' jurisdiction to the housing functions.

III - <u>not to include the CLA commitments in either the PCA or the Local Government Bill</u>

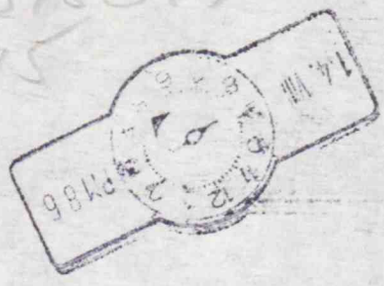
But this would leave both bills vulnerable to criticism that the government was not meeting its existing commitments and to controversial amendments.

In conclusion, there are risks involved in any of the options outlined above. If, however, the Government is not to lose the modest credit involved in meeting its PCA commitments, the best option would undoubtedly be II above (for the Local Government bill to take on the existing CLA commitments). I hope therefore that you will be prepared to consider this option or at least that the Local Government Bill should extend the CLA's jurisdiction to the non-housing functions of the New Town Development Corporations.

I am copying this letter to the Prime Minister, to all members of H Committee, to other Ministers in charge of Departments and to Sir Robert Armstrong.

RICHARD LUCE

PARLIAMENT
LEGISLATION
PTS



Nigel

First available meeting with LPC on 18 September — but later on presumably since they will have a lot to talk about then

N.

PRIME MINISTER

THE FIRST PARLIAMENTARY SESSION AFTER THE ELECTION

In the first parliamentary session after the Election the Government ought to have a weighty legislative programme, not only politically attractive, but getting out of the way contentious measures which have to be done or where the benefits take a full Parliament to come through.

Much of the drafting for such a legislative programme will have to be carried out before the Election so that the Bills are ready for introduction early in the new session. If they are not ready early on, some of the opportunities of the first session will be lost. But Bills will only be ready if drafting is pressed forward in the rest of this Parliament. This needs some planning and drive from QL committee. Otherwise the Government machine will mark time.

Of course, preparation of the legislative programme for the first session back needs to be carried out circumspectly so that there are no damaging leaks of future legislative intentions which frighten off the electorate. Nor does the Government want to tie itself down too far in advance. But unless QL takes some action over the next few months to start the necessary planning, there is a risk that the opportunities of the first session back may be lost.

Worth a talk with the Lord President as Chairman of QL some time?

N.L.W.

Yes — but we must get the Policies straight first.

N.L. Wicks

8 August 1986

MJ2CHN

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
Telephone (Direct dialling) 01-215)
GTN 215) 5147
(Switchboard) 01-215 7877

From the Minister of State
for Industry and Information Technology

GEOFFREY PATTIE MP

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

31 July 1986

INTELLECTUAL PROPERTY BILL

Thank you for your letter of 24 July. I have also seen the letters from First Parliamentary Counsel and your Private Secretary about the Housing and Planning Bill.

I am naturally very disappointed about the delay which passage of the Housing Bill is causing to preparation of the Intellectual Property Bill, although I accept, of course, that amendments for current Bills must take priority over Bills for the next session. I should record, however, that I have been warned by Parliamentary Counsel that the delays are now such that introduction of the Intellectual Property Bill may well now be postponed beyond Christmas. This is considerably later than originally intended.

You ask me to drop my proposal to consult publicly on certain draft clauses. One reason which you give is delay. Delay can occur during preparation of a Bill or during its passage, but I do not think that my proposal would lead to delay at either stage. It would not lead to delay during preparation because the consultation period (which will be strictly limited to four

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weeks) would coincide roughly with the spill-over session, when Counsel will be devoting his attention to the Housing Bill; and, in any event, there are other substantial parts of the Bill, particularly hiving-off of the Patent Office, which Counsel could be getting on with during consultation.

Equally, I do not think that consultation would lead to delay during passage. On the contrary, I think that it would be likely to save time, which is one reason for my suggesting it. Copyright is, of course, a highly technical subject, and it is very important that the legislation be as right as possible. Copyright Acts have a long life and opportunities for amendment are rare, so that if we make a mistake in the Bill, those affected will have to live with the consequences for a long time. Moreover, you will recall that one of the purposes of the Bill is to restate copyright law on a "plain and uniform basis", and in restating and simplifying the existing law there is clearly a risk of inadvertent errors or omissions. If we consult before the introduction of the Bill it is more likely to be acceptable upon introduction and thus fewer amendments would be needed in Committee; it is if we do not consult that large numbers of amendments, holding up passage, would be likely.

The other reason you gave for your request was that we would be setting a precedent. My understanding is that there has been consultation on draft clauses before, most recently on some of the clauses in the Financial Services Bill and on the Trusts (Applicable Law and Recognition) Bill proposed by the Lord Chancellor. I should add that although in my previous letter I referred to public consultation, what I have in mind is consultation with a limited group of interests; the list is not settled, but I am thinking of the British Copyright Council, the Confederation of Information and Communication Industries, the Arts Council, the Bar, the Law Society and the authors or editors of the three leading textbooks on copyright.

Of course, if I found that to go out to consultation would after all cause additional delay I would not do so. With that assurance and in the light of the above, I trust that you would be willing to reconsider your request for me to drop my proposal.

I am copying this to members of QL Committee, Nicholas Ridley, First Parliamentary Counsel and Sir Robert Armstrong.

JY6/JY6ABF

GEOFFREY PATTIE

PRIME MINISTER

LEGISLATIVE PROGRAMME

Points you might make include the following:

(i) On the general management of the programme the balance between the House of Commons and the House of Lords is becoming ever difficult. The House of Commons is rising on 25 July and returning on 21 October. The House of Lords, on the other hand, is sitting for a full extra week in July and for the whole of October. This has been an increasing trend for a number of years and will require in future a rather different judgement than usual on whether more Bills should not be introduced in the House of Lords to give them time later on in the Session to deal with major Commons legislation. Considerations like this would also need to be taken into account in determining the size of legislative programmes.

(ii) Several major Bills are now in the process of completing their legislative passage. The Government hopes to secure during the course of this week:

- the Social Security Bill, although there are three major amendments made by the House of Lords which will have to be resolved by the Commons;

- the Gas Bill

- the Dockyard Services Bill

- the Wages Bill

- the Building Societies Bill

- the Agriculture Bill.

(iv) The major Bills which will have to be left for the spillover include:

- the Public Order Bill including the new offence of criminal trespass introduced following the recent events surrounding the hippy convoy;

- and the Financial Services Bill.

(v) The Channel Tunnel Bill which is a Hybrid Private Bill is now well on its way and has been committed to a Select Committee of the Commons and as a Private Bill it will continue into the next Session. But it is clearly the most substantial exercise of its kind for very many years.

TIM FLESHER

22 July 1986

SLHAMK

CCBG

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
WHITEHALL PLACE, LONDON SW1A 2HH

From the Minister

NBPM

Rt Hon Nicholas Ridley MP
Secretary of State
Department of the Environment
2 Marsham Street
London SW1

22 July 1986

THE DOG LICENCE

I agree with the approach you suggest in your letter of 17 July. All I would ask is that in your announcement you give some reassurance to the farming community that the penalties against livestock worrying, and the remedies available at law, will remain in place and be unaffected by the abolition of the licence. We both know this to be true, but I think it needs to be said.

I am copying this letter to the Prime Minister, members of H, Paul Channon and Sir Robert Armstrong.

MICHAEL JOPLING

PARLIAMENT

LEGISLATION

PTIS

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WELSH OFFICE
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WHITEHALL LONDON SW1A 2ER
Tel. 01-233 3000 (Switchboard)
01-233 6106 (Direct Line)
From The Secretary of State for Wales

The Rt Hon Nicholas Edwards MP

22 July 1986

Dear Willie

I have seen a copy of Nicholas Ridley's letter of 17 July proposing to announce the abolition of the dog licence by written answer on 23 July. I understand from Nicholas's letter, and the draft answer enclosed, that he is also proposing to drop the idea of reallocating the money saved by abolition to dog control measures.

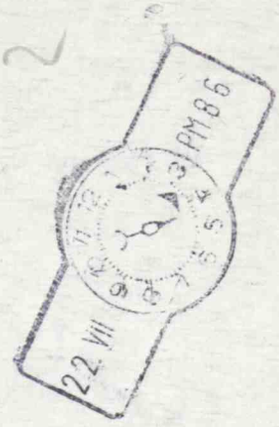
It is doubtful if a special allocation of this money by central grants would do much to mitigage the effects of what will be a controversial announcement. The RSG statements this year do give an opportunity that may not recur and I agree with Nicholas's suggestion to announce the dog licence abolition on 23 July, especially as I shall be announcing the Welsh RSG settlement on that day.

I am copying this letter to the Prime Minister, members of 'H', Paul Channon, Michael Jopling and Sir Robert Armstrong.

Yours ever
Nick

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

PARLIAMENT
LEGISLATION
PT 15



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CONFIDENTIAL

CC BS

Treasury Chambers, Parliament Street, SW1P 3AG

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

WBR

22 July 1986

Dear Lord President,

DOG LICENCE

I have seen a copy of Nicholas Ridley's letter to you of 17 July about the abolition of the dog licence.

attached
FILE WITH MEA

I strongly support the line proposed by Nicholas in the Written Answer for 23 July. It is for the local authorities to fund the dog control measures which they judge to be necessary. I would not expect the local authorities to miss the licence revenue, which on average is under £3000 a year per authority.

I am copying this letter to the Prime Minister, members of H Committee, Paul Channon, Michael Jopling and Sir Robert Armstrong.

Yours sincerely

Jim Ruth

pp JOHN MacGREGOR

(Approved by the Chief Secretary and signed in his absence)

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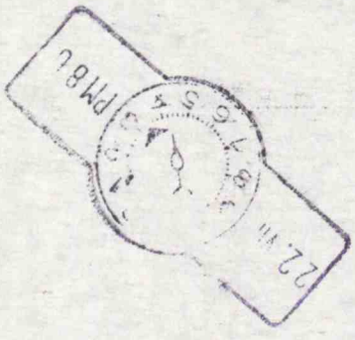
PARLIAMENT

LEGISLATION

PT15



CC BG

CONFIDENTIAL

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

DN - DOE.

The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
LONDON
SW1

17 July 1986

Dear Willie

At the meeting of 'H' on 14 April, colleagues agreed that we should abolish the dog licence subject to agreement between us on arrangements for funding an appropriate level of dog control and welfare activities by Local Authorities.

It has recently occurred to me that next week's announcement of our generous proposals for the 1987/88 rate support grant offers us an opportunity we should not miss. If we were to announce our intention to abolish the dog licence on the day after the RSG announcement, we could make it plain that we looked to local authorities to use their existing powers to deal with dog nuisance within the additional resources available. It would have to be done immediately after the RSG announcement, or it could look like an afterthought, rather than deliberate policy.

I suggest announcing this by written answer on 23 July and attach a draft. I shall proceed on this basis unless I hear to the contrary by midday on Tuesday 22 July.

I am copying this letter to the Prime Minister, members of 'H', Paul Channon, Michael Jopling and to Sir Robert Armstrong.

Yours ever
Nicholas

NICHOLAS RIDLEY

Q To ask the Secretary of State for the Environment if he is yet in a position to announce the Government's conclusions on the future arrangements for dog licensing in Great Britain.

A The dog licence costs about £3.5 million annually to collect, and raises less than £1 million. There is some support for the licence from those who are concerned that dog nuisance and dog control should be properly managed and funded. Local authorities are best placed to deal with this problem and we think it right that they should continue to do so. They have adequate existing powers and can make byelaws as necessary. In the light of our generous proposals for the 1987/88 Rate Support Grant Settlement, authorities will be able to accommodate any expenditure which they may judge to be necessary.

Accordingly, the Government has decided to introduce legislation to abolish the licence when a suitable opportunity arises.

CC/BG

From the Government Chief Whip

House of Lords

7 July 1986

Dear David,

Thank you for your letter concerning the publication of the Wages Act. From what you say it would obviously be in everyone's interest were this to be generally available as soon after Royal Assent as possible. I have asked the Public Bill Office to do their best to ensure that the Act will be published as early as possible in August.

I am copying this letter to the Lord Chancellor, members of E(A), the Lord Privy Seal, members of L Committee, the First Parliamentary Counsel and to Lord Belstead.

Yours ever,

Denham

DENHAM

The Lord Young of Graffham
Secretary of State for Employment

010

MC/B36

CBG.

SECRETARY OF STATE FOR EMPLOYMENT

Caxton House Tothill Street London SW1 9NF

Telephone Direct Line 01-213 6460

Switchboard 01-213 3000

TH

The Rt Hon Lord Denham
Captain of the Gentlemen-at-Arms
House of Lords
LONDON SW1A OPW

7 July 1986

Dear Bertie, WILL REQUEST IF REQUIRED

Thank you for copying to me your letter to the Lord Chancellor of 27 June concerning the commencement of the Gas Bill and priorities for the work of the House of Lords Public Bill Office.

I quite understand the pressure that the office will be under and can see the case for priority being given to the Gas Bill if some of its provisions come into force on Royal Assent. I must point out, however, that similar considerations apply to the Wages Bill which is on course for Royal Assent towards the end of July. The redundancy rebate provisions come into operation on Royal Assent, or on 1 August if later, and one of the key provisions on wages councils - the removal of minimum wage protection from young people under 21 in order to improve their employment prospects - also comes into force on Royal Assent. The councils are also enabled to start work on preparing their new, more limited, wages orders from that date.

In general, these are not provisions that oblige people to take any particular action immediately from Royal Assent, but they are significant and it is likely that there will be public demand for copies of the Wages Act, as it will then be, immediately from Royal Assent. I therefore hope that priority can be given to work on the Wages Act alongside the Gas Act.

I am copying this to the Lord Chancellor and recipients of your letter to him.

Yours

010

DEPARTMENT OF TRADE AND INDUSTRY
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From the Minister of State
for Industry and Information Technology

GEOFFREY PATTIE MP

NBPM

The Rt Hon Lord Whitelaw CH MC
Lord President of the Council
68 Whitehall
London
SW1

20 June 1986

Dear Willie

Following the comments I understand you recently made in Cabinet about the pressure on the House of Lords' legislation timetable, Paul Channon and I have been keeping an even closer eye on the preparation of the Bill giving effect to the proposals in the White Paper on Intellectual Property Rights and Innovation. This letter is simply to report progress.

Almost all the draft instructions for this Bill are now with Parliamentary Counsel but I understand that this Department's Solicitor has just been told by Parliamentary Counsel that the Bill will not be ready for introduction until shortly before Christmas - that is, about a month later than originally intended. This is of some concern, given the complexity and expected length of the Bill which I understand may mean that the whole of the next session is needed to get it through. I believe that the reason for the delay is that the Housing and Planning Bill will not now complete its final stages until October.

We are, of course, already holding detailed discussions with interested parties, but you should be aware that we are now planning to consult publicly on the draft clauses in the Bill on copyright, designs and performers' protection, probably during October. This intention was not included in the bid approved by QL Committee, but both the form and the content of the proposals

are already stimulating public interest from specialist sectors and it would seem advisable to take full account of their concern before introduction. Since introduction will in any event be a month later than planned, this consultation will not involve any extra delay.

I am copying this letter to members of QL Committee, Sir Robert Armstrong and First Parliamentary Counsel.

GEOFFREY PATTIE

JE4ABH

cc BG

FROM THE LEADER OF THE HOUSE
HOUSE OF LORDS

5 June 1986

Dear John

JOINT COMMITTEE ON PRIVATE LEGISLATION

Thank you for your letter of 21 May incorporating the revised draft orders of reference for the Private Legislation Joint Committee.

These have been shown to Lord Aberdare who is happy with them, as I am.

I understand that you propose to table the motion setting up a Committee later today, for taking in the Commons next week. This House will then respond with a reciprocal motion in the usual way.

Lord Aberdare was originally anxious that the Committee should not begin work before the Autumn. In the event, I think that the timing will be to his liking as it is highly unlikely that the Committee will be able to do more than deliberate and issue invitations for evidence before adjourning for the Summer.

I am copying this letter to the other members of L Committee, to other Ministers in charge of Departments, and Sir Robert Armstrong.

The Rt Hon John Biffen MP

PARLIAMENT
LEGISLATION
PT 15

CONFIDENTIAL

cc BG

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref: B/PSO/14994/86
Your ref:

The Rt Hon John Moore MP
Secretary of State for Transport
2 Marsham Street
London
SW1P 3EB

5 June 1986

NBPM

Dear John

I have seen a copy of your letter of ~~23~~ at flap May to Nigel Lawson.

I agree that we should take the opportunity of the Airports Bill to secure a power to require track-keeping monitoring at designated airports on the lines you suggest. It is particularly important that we demonstrate to the communities around major airports that we are concerned about aircraft noise, and this is a useful chance to do so.

I am copying this letter to recipients of yours.

Yours

NICHOLAS RIDLEY

CONFIDENTIAL

PARLIAMENT legislation 0715

2153/15

CONFIDENTIAL

CC BG

Treasury Chambers. Parliament Street, SW1P 3AG

The Rt Hon John Moore MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
LONDON
SW1P 3EB

29 May 1986

NBPM

Dear John

AIRPORTS BILL: ABATEMENT OF TRAFFIC NOISE

Thank you for your letter of 23 May to Nigel Lawson which set out very fully the case for imposing a new duty on the owners of designated airports to monitor track-keeping.

Although it is in some ways regrettable to accompany privatisation with additional and new statutory duties, I can quite see the difficulties of any alternatives to your proposals. Since the cost to the BAA of what you propose is apparently so small, it will be difficult for the BAA to maintain a serious objection to it.

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

Yours ever

Norman

NORMAN LAMONT

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PARLIAMENT

LEGISLATION

PTIS

PRIME MINISTER

29 May 1986

AIRPORTS BILL - AIRCRAFT TRACKING TO MINIMISE NOISE DISTURBANCE

In a crowded island the conflicts between airports and the environment are acute. Yet our steadily expanding civil aviation industry is an important and successful contributor to the economy. To cater for continuing growth we will need more airport capacity and, particularly in London, intensive use of existing capacity.

Against this background the Government was wise to indicate in last summer's Airports White Paper the readiness to introduce permanent monitoring to ensure that aircraft keep to the designated routes causing least noise disturbance. It makes sense to impose this monitoring requirement on the BAA and to recover the very small additional unit costs from airline passengers through airport charges. Arguably this should enhance the value of a privatised BAA to investors since it will help to smooth the path for future expansion of London's airport capacity.

Conclusion

We support John Moore's proposal to amend the Airports Bill so as to impose on airport operators, notably the BAA, the requirement for regular aircraft track monitoring.

JOHN WYBREW

PARLIAMENT

LEGISLATION

PT 15

CCBS

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Chancellor of the Duchy of Lancaster

Tel No: 233 3299
7471

29 May 1986

Richard Allan Esq
Principal Private Secretary to
the Secretary of State for
Transport
Department of Transport
2 Marsham Street
LONDON
SW1P 3EB

NBBN

Dear Richard,

AIRPORTS BILL: ABATEMENT OF AIRCRAFT NOISE - PERMANENT MONITORING OF AIRCRAFT TRACK-KEEPING

The Chancellor of the Duchy has seen your Secretary of State's letter of 23 May to the Chancellor of the Exchequer.

The Chancellor of the Duchy is content with the proposals for amendment to the Airports Bill described in that letter.

I am sending a copy of this letter to David Norgrove (No 10), to Rachel Lomax (HMT), to the private secretaries to other members of E(A) and to the Chief Whips in the House of Commons and of Lords, and to Michael Stark (Cabinet Office).

Yours Sincerely,

A. Lansley

ANDREW LANSLEY
Private Secretary

PARLIAMENT
LEGISLATION

PT 15

cc BG

FROM THE PRIVATE SECRETARY TO THE LEADER OF THE HOUSE
AND THE CHIEF WHIP

28 May 1986

Dear Richard,

AIRPORTS BILL: ABATEMENT OF AIRCRAFT NOISE - PERMANENT MONITORING OF AIRCRAFT TRACK-KEEPING

ATTACHED

Lord Denham has received a copy of your Secretary of State's letter to the Chancellor of the Exchequer.

In the usual course of events it would be unfortunate that the Government should seek to introduce new matter into the Bill at Report Stage. But the amendment seems likely to command broad support in this House and the Chief Whip has no objection to the course of action you have proposed.

I am copying this letter to the Private Secretaries to the Prime Minister, to the members of E(A), to Murdo Maclean, and to Sir Robert Armstrong.

Yours sincerely,

Robin.

R H WALTERS

Richard Allen Esq
PS/Secretary of State for Transport
Department of Transport
2 Marsham Street
LONDON
SW1

DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH

TELEPHONE 01-934 9000

FROM THE SECRETARY OF STATE

Baroness Cox
1 Arnellan House
144-146 Slough Lane
Kingsbury
LONDON NW9

28 May 1986

Dear Caroline,

I understand that Willie Whitelaw promised to let you see in advance a copy of the proposed Government amendment on freedom of speech, and in his absence abroad I am writing to fulfil that undertaking.

The attached clause will be tabled tomorrow and moved on Third Reading next Monday. I am sure you will understand that time constraints and the pressures on Parliamentary draftsmen have made it impossible to provide longer notice.

You will see that the amendment ranges more widely than did yours in providing for the protection of free speech in the general context of institutional life as well as in relation to visiting speakers. It also encompasses all institutions of further and higher education, rather than seeking to limit the application of the provision to higher education.

I hope therefore that you will find the clause acceptable. I am copying this letter to the others who were at your meeting with the Lord President on 12 May and enclose a copy for you to pass to the Hon Mary Pearson.

Yours

Kenneth

EDUCATION BILL [H.L.]

AMENDMENT

TO BE MOVED ON THIRD READING

BY THE EARL OF SWINTON

BEFORE CLAUSE 38

Insert the following new Clause -

("Freedom of speech in universities etc.

(1) No person who is concerned in the government of a further education establishment or who is a member, student or employee of such an establishment shall act in any way which is intended to prevent, or which it would be reasonable to expect would be likely to prevent -

(a) any member, student or employee of any such establishment; or

(b) any person duly invited to any such establishment;

from stating any fact or expressing any view, while on the premises of any such establishment, which he may lawfully state or (as the case may be) express while on those premises.

(2) The senior administrator of every such establishment shall take such steps as are reasonably practicable to secure that any person duly invited to the establishment is not prevented from stating any

fact or expressing any view, while on the premises of the establishment, which he may lawfully state or (as the case may be) express while on those premises.

(3) Every such senior administrator shall, in discharging the duty imposed on him by subsection (2) above, seek the advice of the chief officer of police whenever he considers that that officer's advice is likely to assist him in the discharge of that duty.

(4) In this section -

"further education establishment" means any university and any other establishment of further education;

"hall", in relation to any university, means any institution of the university in the nature of a college (and so does not include a hall of residence);

"senior administrator", in relation to any further education establishment, means the Vice-Chancellor, Director or Principal of the establishment (or person holding the equivalent position) and includes any person for the time being exercising his functions; and

"university" includes a university college and any college, or hall in a university.

(5) For the purposes of this section, a person is duly invited to a further education establishment if he is invited in accordance with the relevant rules and procedures of the establishment -

(a) to address any meeting on their premises; or

(b) to take part in any activity on their premises.

(6) Where a students' union occupy premises which are not premises of the further education establishment in relation to which the union is constituted, any reference in this section to the premises of the establishment shall be taken to include a reference to the premises occupied by the students' union.

PARLIAMENT

LEGISLATION

PT 15

Minister of State for the Environment, Countryside and Local Government

Department of the Environment
2 Marsham Street London SW1P 3EB
Telephone 01-212 3434

My ref: W/PSO/33049/86

27 May 1986

Dear Richard,

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION - PROPOSED BILL 1986/87

Thank you for your letter of 28 April about the government commitments to make minor revisions to the powers of the Local Ombudsmen in England and Wales.

Your review of the options for meeting these commitments was in my view balanced and fair. I agree that all the options are attended by difficulties; and I appreciate your concern not to jeopardise the proposed Bill on the Parliamentary Commissioner. I support your conclusion therefore that we should defer a decision until after there has been an opportunity fully to assess the implications of the Widdicombe Inquiry Report. My strong inclination would however be not to close any of the options at this early stage, but carefully to measure the emerging sources of controversy.

The Widdicombe Report is now at the printers, but due to be published in June. I agree your suggestion that, as soon as practicable, our officials should meet to discuss it before putting recommendations forward. They could at the same time weigh any points arising from the report of the Select Committee, which is due to be published shortly.

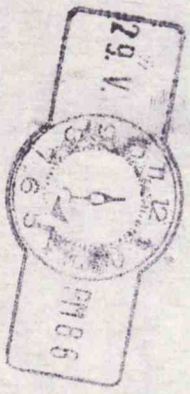
I am copying this letter to the Prime Minister, to all members of H Committee, to other Ministers in charge of Departments and to Sir Robert Armstrong.

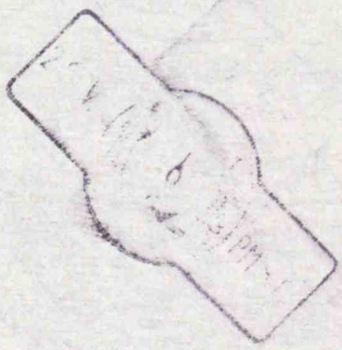
Yours ever,

WILLIAM WALDEGRAVE

The Rt Hon Richard Luce MP

PARLIAMENT
LEGISLATION
PT 15





DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

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

23 May 1986

Dear Nigel.

AIRPORTS BILL: ABATEMENT OF AIRCRAFT NOISE - PERMANENT MONITORING OF AIRCRAFT TRACK-KEEPING

Purpose

I am writing to you about a proposal to amend the Airports Bill to fill a small but important gap in the arrangements for controlling aircraft noise disturbance at those airports where I have direct responsibility for the abatement of noise - currently three of the British Airports Authority's (BAA) airports, Heathrow, Gatwick and Stansted. My powers for this purpose are in section 78 of the Civil Aviation Act 1982, and enable me to specify appropriate noise abatement measures at aerodromes designated for that purpose.

"Noise preferential routes"

One important noise abatement measure specified by the Secretary of State is the concentration of aircraft taking off from the airports along the least possible number of routes, designed to overfly as few people as possible. Such routes, called Noise Preferential Routes (NPRs) are promulgated by the Secretary of State after consultation with the Civil Aviation Authority (CAA).

Monitoring of aircraft noise and of track-keeping

The monitoring of statutory maximum noise limits under these routes has been carried out for a number of years by the BAA on behalf of the Secretary of State.

But monitoring of track-keeping - ie the compliance of aircraft with NPRs - has been limited to periodic samples commissioned by my Department from the CAA. These studies give only a broad indication of compliance, are expensive, and because of the time required to process the data are long out-of-date when published. They cannot therefore provide rapid and detailed information to facilitate effective control through enforcement nor do they enable specific cases of complaint to be investigated. Clearly, there is a need for improvement. Recognising this need the White Paper on Airports Policy (Cmnd 9542) stated in paragraph 8.10 that:

> "The Government will continue to monitor the actual track-keeping performance of aircraft on NPRs from Heathrow and Gatwick by commissioning periodic sample studies .... Consideration will be given ..... to introducing permanent monitoring of track-keeping on those routes where this is likely to be of overall benefit."

We have given some preliminary consideration to a permanent track-keeping monitoring system, which might form part of an integrated noise and track-keeping monitoring system. We have also considered who should be responsible for the provision of such a system.

Responsibility for monitoring of track-keeping

It is our view that this responsibility should lie with the operation of the aerodrome designated for noise abatement purposes, as is presently the case for noise monitoring, rather than with the CAA as the providers of air traffic services. The CAA do not provide navigational services at every aerodrome, and may not for ever do so at the BAA aerodromes. If these services are provided on behalf of the aerodrome operator by an agency other than the CAA there is no reason for the CAA to be required to provide track-keeping monitoring facilities at that aerodrome. There are also legal complications in imposing the responsibility on the CAA.

Need for new statutory power

The Secretary of State already has powers under section 78(8) of the Aviation Act 1982 to impose, at his discretion and after consultation with the person managing a designated aerodrome, the duty of providing, operating and maintaining a noise monitoring system at the manager's own expense. To date the BAA has acted voluntarily in this area and so it has not been necessary to use these powers.

Until recently, we believed that the 1982 Act might be adequate for imposing a similar duty in respect of the monitoring of track-keeping. But we are now advised that this is not so. To give effect to our White Paper

undertaking therefore new powers are needed - otherwise we shall either not be able to proceed or should have to do so at the Government's expense, without the ability to recover the cost from airport users. The Airports Bill provides a good opportunity to obtain such powers by proposing an amendment at the Lords Report Stage. It is desirable that our powers in both these areas should be consistent. The amendment we have in mind therefore, is a new general power to enable the Secretary of State, after consultation and if he thinks fit, to impose a requirement on the person managing a designated aerodrome to monitor track-keeping at his own expense. Enforcement of compliance with the NPRs will remain a matter for Government as is the case for noise monitoring. The airport operator would be required to provide records of the movements of aircraft to the Secretary of State to assist him in enforcing compliance with the NPRs and responding to complaints.

Effect on the BAA and their reaction

I do not believe that my taking this power can have any perceptible impact on the BAA's business or on the proceeds of privatisation. In the first place, before I decided to exercise my discretion to impose such a duty on the BAA I should be obliged to consult them and to listen to their representations on cost and other implications. In fact the likely cost to the BAA of such an integrated monitoring system - a capital cost of £1m in very broad terms for Heathrow, Gatwick and Stansted, and about a tenth of this in annual operating and maintenance costs - would be insignificant in relation to their turnover and profits. The cost is in any case not imminent, may be phased, and would be recoverable through airport user charges. The cost to airline passengers would be very small. For example, at Gatwick, if the BAA chose to recover the full capital costs of the system from the users within the first two years of its installation, the charge would amount to about one penny per passenger; and this would reduce to an infinitesimal amount from the third year - merely to meet running costs.

The BAA will object to a statutory provision; but there are other airport authorities in this country, for example Manchester, which recognise the need for such a measure and carry out voluntarily some form of track monitoring appropriate to their local circumstances. The BAA itself has offered to discuss a voluntary arrangement with us. I do not however believe that it would be sound to rely on voluntary arrangements in a matter of this kind after privatisation: we cannot count on the continued co-operation of future management.

Public reaction

I believe that such a requirement at the BAA's designated airports will be welcomed by our supporters

and by the public in general. It will also offer a positive assurance to communities around Heathrow, Gatwick and Stansted airports that we mean what we say about caring for the environment.

Conclusion

I hope that colleagues will be content with what I propose. Subject to your agreement, I will ask Malcolm Caithness to introduce an amendment to the Airports Bill extending the Secretary of State's powers in section 78 of the 1982 Act to cover the permanent monitoring of track-keeping at airports designated for this purpose. the Lords Report Stage for the Bill is likely to be Tuesday 10 June; Government amendments should therefore be put down by Tuesday 3 June. I should therefore be grateful for comments by noon on Monday 2 June at the latest.

I am copying this letter to the Prime Minister, to other members of E(A), to the business managers in the Commons and the Lords and to Sir Robert Armstrong.

Yours ever

JOHN MOORE

FROM THE PRIVATE SECRETARY

HOUSE OF LORDS,
SW1A 0PW

CONFIDENTIAL

Dear Stephen,

SECTION 39 OF THE LEGAL AID ACT 1974

The Lord Chancellor seeks advice from the Law Officers on the implications for the exercise of his statutory discretion under section 39 (3) of the Legal Aid Act 1974 (the Act) of the requirements in that Act that money needed to fund the provision of legal aid is to be provided by Parliament.

Part II of the Act makes provision for legal aid in criminal proceedings and proceedings relating to children and young persons. Section 28-31 and 35 set out the various powers to order legal aid, prescribe the circumstances in which it may be given and make various provisions relating to the scope, amendment and revocation of legal aid orders and to the enforcement of legal aid contribution orders. Section 37 provides for the payment of the costs of legal aid. Subsection (1), as amended by section 11(1) of the Legal Aid Act 1982, requires the cost of legal aid to be paid out of the legal aid fund or by the Lord Chancellor, as the Lord Chancellor may direct. In practice, the costs of criminal proceedings in all courts other than the Magistrates' Court are made by the Lord Chancellor through the respective court. Subsection (5) of section 37 provides that

> "Any sums required by the Lord Chancellor for making payments under this section shall be defrayed out of moneys provided by Parliament".

The costs of criminal proceedings in the Magistrates' Court are paid by the Law Society out of the legal aid fund, in accordance with subsection (4) of section 37, which requires them to be paid out of the fund in like manner as costs which fall to be so paid under Part I of the 1974 Act. Section 17(6) provides that

> "The sums required to meet payments out of the legal aid fund,..... shall be paid into that fund by the Lord Chancellor at such time and in such manner as he may with the approval of the Treasury determine, and shall be so paid out of moneys provided by Parliament".

S. Wooler Esq
Law Officers' Department
Royal Court of Justice
Strand

The procedure for the determination and payment of costs in individual cases are set out in regulations made by the Lord Chancellor under section 39: the Legal Aid in Criminal Proceedings (Costs) Regulations 1982. Section 39(1) provides (inter alia)

> "Without prejudice to any other provisions of this Part of this Act authorising the making of regulations or rules, the Lord Chancellor may make such regulations as appear to him necessary or desirable for giving effect to this Part of this Act or for preventing abuses thereof and, in particular, any such regulations may -
>
> (f) Prescribe rates or scales of payment of any costs payable under section 37(1) above and the conditions under which such costs may be allowed;
>
> (g) Provide for the assessment and taxation of such costs and for the review of any assessment made on taxation carried out under regulations;".

Subsection (3) of section 39 provides that

> "The Lord Chancellor in making regulations under this section as to the amounts payable to counsel or a solicitor assigned to give legal aid under this Part of this Act, and any person by whom any such amount falls to be assessed, taxed or reviewed under the regulations, shall have regard to the principal of allowing fair remuneration according to the work actually and reasonably done".

The power to make regulations under Part II of the Act is exercisable by statutory instrument and any such regulations are subject to annulment in pursuance of a resolution of either House of Parliament.

The 1982 Regulations and, in particular, the levels of costs prescribed in them, have been the subject of recent ligitation between the Lord Chancellor and the Bar and the Law Society respectively. The litigation has been adjourned generally in accordance with the terms of agreed timetables under which the Lord Chancellor has undertaken to conduct various discussions with the two branches of the profession.

Counsel have now advised the Lord Chancellor generally on the construction of section 39(3) and, in particular, on whether or not, and if so to what extent, the Lord Chancellor may take account of competing claims on the public purse in making regulations under section 39. The case for counsel's opinion and the opinion itself are attached as Annexes A and B.

The Lord Chancellor's immediate concern is, however, that the whole of the Act and, in particular, the references to Parliamentary control, must be read together. Although section 39(3) requires him to have regard to the principle of fair remuneration this provision must not be read in isolation from the provisions subjecting any regulations made under section 39 to the control of Parliament through negative resolution procedure and requiring payments in respect of all forms of legal aid to be made from moneys provided by Parliament. In the case of payments for work done in the Magistrates' Court moreover, the approval of the Treasury is required for the sums paid into the legal aid fund by the Lord Chancellor. The Lord Chancellor cannot, therefore, expend any money on legal aid without the provision of that money by Parliament and, consequently, without Parliament's express approval. The requirement to have regard to the principle of fair remuneration and the power to make regulations prescribing rates and the scales of payment must be interpreted in this context.

On the basis that Parliamentary approval of the sums that it is proposed be expended on legal aid must always be given, it is at least arguable that this must necessarily be a relevant factor in the Lord Chancellor's consideration of the exercise of his discretion under section 39. If Parliament is likely to be unwilling to vote an increase of a particular order, and this is known or suspected by the Lord Chancellor, then he ought to be able to take this factor into account in deciding how to exercise his discretion. If he is not able to bring such considerations into the balance, he may thereafter find himself in the position of having resolved that fair remuneration ought to be set at a particular level but Parliament having refused to vote the moneys necessary to fulfil that resolution.

The question on which advice is sought is what is the relationship between the requirement for the Lord Chancellor to have regard to the principle of fair remuneration and the requirement for Parliament to approve the payment of moneys to the Lord Chancellor for the purpose of paying that remuneration. Is this a relevant consideration for the Lord Chancellor to take into account? What are the consequences if the Lord Chancellor resolves to fix remuneration at a particular level but Parliament refuses to vote him the increases required?

I would be grateful if you could obtain the views of the Law Officers on these issues, which are matters of some concern to the Lord Chancellor.

Copies of this letter go to those on the attached list.

Yours sincerely,

Helen Tuffs

PP R.C. Stoate

LIST OF RECIPIENTS

Private Secretaries to:
The Prime Minister

The Chancellor of the Exchequer

The Lord Privy Seal

The Minister of Agriculture, Fisheries and Food

The Secretary of State for Employment

The Secretary of State for the Environment

The Secretary of State for Trade and Industry

The Lord President of the Council

The Secretary of State for the Home Department

The Secretary of State for Eductation and Science

The Parliamentary Secretary to the Treasury

The Minister of State, Department of Transport

The parliamentary Under-Secretary of State, Department of Energy

The Parliamentary Under-Secretary of State, Scottish Office

The Secretary to the Cabinet

ANNEX A

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER 53

AND

IN THE MATTER OF A DECISION OF THE LORD CHANCELLOR IN RELATION TO FEES PAYABLE TO BARRISTERS FOR CRIMINAL LEGAL AID

AND

IN THE MATTER OF THE LEGAL AID ACT 1974

BETWEEN:- ROBERT SCOTT ALEXANDER — Applicant

AND

THE LORD CHANCELLOR — Respondent

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

DIVISIONAL COURT

IN THE MATTER OF THE LEGAL AID ACT 1974

AND

IN THE MATTER OF THE LEGAL AID IN CRIMINAL PROCEEDINGS (COSTS) REGULATIONS 1982

AND

IN THE MATTER OF A DECISION OF THE LORD CHANCELLOR IN A LETTER DATED 7TH FEBRUARY 1986

BETWEEN:- THE LAW SOCIETY — Applicant

AND

THE LORD CHANCELLOR — Respondent

INSTRUCTIONS TO COUNSEL TO ADVISE

Counsel has herewith:-

1. Counsel's previous instructions in the application brought on behalf of the Bar Council

2. Documents before the Court in the applications brought on behalf of the Bar Council and on behalf of the Law Society and agreed timetable

3. Transcript

1. The Treasury Solicitor acts on behalf of the Lord Chancellor, Respondent to applications for judicial review brought, respectively, on behalf of the Bar Council and on behalf of the Law Society in respect of a decision of the Lord Chancellor given by letter dated 7th February 1986 when he increased by 5% the amounts payable to counsel and solicitors in respect of criminal legal aid work. That decision was the subject of challenge and on 20th March 1986 the Bar's application came before the full Divisional Court. After hearing a day and a half of argument the Lord Chief Justice adjourned the application and pursuant to an agreement reached between the Bar Council and the Lord Chancellor the application was adjourned generally whilst negotiations took place between the two parties. The application brought on behalf of the Law Society was listed to be heard on 8th April 1986 but in the event was also adjourned generally, the parties agreeing to pursue negotiations to the same timetable as

that agreed by the Lord Chancellor with the Bar.

2. The background to both applications is set out in the Affidavits filed in support of the applications for judicial review. Briefly, the facts were as follows. The Lord Chancellor, pursuant to section 39 of the Legal Aid Act 1974 made Regulations in 1982 which prescribed fees payable in respect of work actually or reasonably done by counsel and solicitors in criminal legal aid. Those Regulations were made following consultation with both the Bar Council and the Law Society but the actual figures prescribed in those Regulations were not agreed by the time the Regulations were made. Neither the Bar Council nor the Law Society took the view that the figures prescribed provided fair remuneration. It was understood, however, that a wider review would in due course take place and, the Bar Council and the Law Society subsequently commissioned management consultants' reports by which they hoped to demonstrate to the Lord Chancellor that the rates presently being paid should be increased. From 1982 onwards the rates prescribed in the Regulations were uplifted on an annual basis approximately in line with inflation.

3. The Bar's report commissioned from Coopers & Lybrand was eventually presented on 13th September 1985. Critiques of the report were prepared by the Lord Chancellor's Department and by the Office of the Director of Public Prosecutions and the Treasury also put forward comments. The critiques were supplied to the Bar Council towards the end of November 1985 and a meeting between representatives of the Lord Chancellor's Department and the Bar Council took place on 17th December 1985. Following that meeting officials formed the view,

which was accepted by the Lord Chancellor, that it would not be possible to complete full discussions of the Coopers & Lybrand report before the time when the next uprating regulations would come to be made, following the practice of previous years. Ministerial discussions took place in January of 1986 following the Lord Chancellor's provisional determination to provide for a 5% increase in the rates fixed for criminal legal aid work whilst discussions continued on the Bar Council's report. Following those discussions the Lord Chancellor determined this was the appropriate course to adopt and the Bar were notified of this intention by letter of 7th February 1986 which was given to the Chairman of the Bar in time for the Bar's EGM which had been fixed for 8th February 1986.

4. The report commissioned by the Law Society from Peat Marwick Mitchell was provided to the Department on 7th November 1985. That report was also considered by officials in the Lord Chancellor's Department and discussions took place on it and a meeting was held on 19th December 1985 between officials of the Lord Chancellor's Department and the Law Society representatives. Again, the view was taken by officials that there was insufficient time fully to evaluate the Peat Marwick Mitchell Report by the time Regulations would need to be made to take account of inflation, early the following year. The Lord Chancellor formed the same intention with regard to the Law Society as he had with respect to the Bar Council. Further discussions did take place in January between officials of the Lord Chancellor's Department and the Law Society whilst the Ministerial discussions above referred to took place in that month. Ultimately, the same decision was reached with regard

to the Law Society as was reached with regard to the Bar Council. The Law Society were notified of the decision at the same time as the Bar Council.

5. Both the Bar Council and the Law Society issued applications for judicial review. The Bar Council sought a declaration that the decision in the letter of 7th February 1986 was unlawful. The Law Society sought a declaration that the decision was ultra vires and an order of mandamus requiring the Lord Chancellor to consider what changes to make to the 1982 Regulations.

6. When the application made on behalf of the Bar Council came before the Court on 20th March 1982 it was submitted on behalf of the Bar Council that the Lord Chancellor had failed to consult or to negotiate with the Bar Council before reaching the decision contained in the letter of 7th February 1986 in breach of assurances that such consultations and negotiations would take place, contrary to the legitimate expectation of such negotiations and consultations. Consequently it was contended he had acted unfairly. Second, it was submitted that in making his decision the Lord Chancellor failed properly to fulfil the statutory obligation contained in section 39 of the Legal Aid Act 1974 to "have regard to the principle of allowing fair remuneration according to the work actually and reasonably done" in relation to the level of fees set to take effect from 1st April 1986. Counsel on behalf of the Bar Council supported the first contention by taking the Court, in detail, through the history of consultations since 1982 and, in particular, from the time when the Coopers & Lybrand report was made available. The Bar Council contended that

it had expected expeditious consultation and negotiation on the Coopers & Lybrand report which had not taken place before the Lord Chancellor's decision. Whether or not the letter of 7th February 1986 made clear the Lord Chancellor's intention to hold further discussions on the Coopers & Lybrand report that intention was made clear by the correspondence which passed between the Chairman of the Bar and the Lord Chancellor after that date. But the Court was not satisfied as to why such consultations had not taken place actively during December and January whilst the Lord Chancellor was considering the appropriate course to adopt. For reasons which are obvious, the Lord Chancellor was unable in his Affidavit to expand upon the Ministerial discussions which took place during that time and it was the apparent lack of activity over the period December to January which caused the Court disquiet. In the event, the Lord Chief Justice adjourned the proceedings whilst the parties discussed a timetable for consultation to continue and the Bar Council were given, by the Lord Chancellor, a date by which his decision on the Bar's claim for increased remuneration would be given. That date is 16th July 1986, following a detailed timetable for discussion.

7. The Law Society have agreed to discussions on the same timetable in respect of the report commissioned by them and prepared by Peat Marwick Mitchell. The Law Society's application contains grounds of challenge to the 7th February decision which are formulated somewhat differently from the challenge of the Bar Council but, also, contains the ground that there was a failure to meet legitimate expectations of discussions. The claim is also made that the Lord Chancellor failed to satisfy himself that the rates

specified in the Regulations provided for fair remuneration. The challenge also contends, inter alia, that the Lord Chancellor failed to investigate fully what changes ought properly to be made himself before forming a provisional view on that matter and to inform the Law Society of "that investigation" to enable it to make proper representations in relation thereto.

8. The Lord Chancellor is now obliged, pursuant to the agreement reached with both the Bar Council and the Law Society to enter into discussions forthwith with those bodies on their respective reports, to consider other matters to which the Lord Chancellor thinks regard ought to be given and to notify both bodies of his provisional view by 27th June 1986 in sufficient detail to allow representations and further negotiations to take place. His final decision as to whether or not to make any changes to the 1982 Regulations (in addition to the 5% increase in the rates already provided for following his decision of 7th February 1986) is to be made by 16th July 1986 and a draft of any necessary regulations supplied to both bodies at that time.

9. The Lord Chancellor in making regulations under section 39 as to the amounts payable to counsel or a solicitor assigned to give legal aid according to section 39(3) "shall have regard to the principle of allowing fair remuneration according to the work actually or reasonably done". The Lord Chancellor is concerned with the proper construction of that section in the context of the discussions and consultations now to take place and in the context of any decision to make regulations under section 39. The matters to be considered in deciding whether prescribed rates in

such Regulations are fair were described by the Lord Chancellor in his Affidavit filed in response to the applications by both the Bar Council and the Law Society. The Lord Chancellor took the view that in deciding whether the rates are fair a wide variety of factors may be relevant which include consideration of other claims on the public purse. The expression "having regard to the principle of allowing fair remuneration" does not appear in any other legislation, so far as Instructing Solicitor is aware. The Lord Chancellor is concerned to have guidance on the proper application of that duty in the light of the Bar Council and the Law Society's claim for a substantial increase in remuneration. The Court on the application by the Bar Council did not consider the proper construction of section 39(3). Counsel is particularly referred to the following transcript references:-

20th March morning session page 5 letter D, page 9 letter G, page 11 letters E to G, page 12 letters A to H.

Counsel is also referred to the Affidavit filed in reply by the Chairman of the Bar in response to the Lord Chancellor's Affidavit.

10. The Bar Council contended that the Lord Chancellor may not lay down a fee which he does not honestly consider to be fair remuneration whether for reasons of government policy or for any other reason. To give any other meaning would deprive the injunction in section 39(3) of any meaning at all. The Bar contended it is impossible to fix a fee which the Lord Chancellor does not believe is fair and say that, in

doing so, the Lord Chancellor has had regard to the principle of fair remuneration. Fees may not be fixed lower than those which the Lord Chancellor considers to be fair nor can they be fixed at a rate higher than he considers to be fair. Nevertheless the Bar accepts that their remuneration must not be considered in isolation and there must be comparisons. The Bar accepts it is not irrelevant that the remuneration comes out of the public purse but the Bar relies upon the fact that Coopers & Lybrand in making their comparison made a comparison with others (i.e. Government lawyers) who are paid out of the public purse to meet this point. In the context of section 39(3) the Bar contends that the proper meaning of the words "shall have regard to the principle of fair remuneration" means that the Lord Chancellor is obliged to fix the fees which he considers would constitute fair remuneration for the work done.

11. Counsel for the Lord Chancellor contended (21st March 1986 morning session page 44 letter A onwards) that the question of cost or the interest of the tax payer is not irrelevant to the question of fair remuneration. There is no abstract concept of fair remuneration and it has to be considered in the context of the society in which the particular remuneration is paid. The obligation to have regard to the principle of fair remuneration imposed upon the Lord Chancellor does not oblige him to disregard all other considerations. That principle is not an exclusive test. It is an important and usually a paramount test. However, there might be matters of important public policy which is a matter of discretion for a particular year might outweigh the question of fair remuneration. When the Lord Chancellor has regard to the principle of fair remuneration he is not obliged to disregard other matters and there is no inconsistency between

having regard to fair remuneration and having regard to other matters including the question of the charge that the Legal Aid Fund is on public funds and to other charges on such funds. It is accepted that the Treasury cannot dictate to the Lord Chancellor the exercise of his discretion but Treasury restraints are a relevant factor to which the Lord Chancellor can have regard in the exercise of that discretion. Although the duty to have regard to the principle of fair remuneration also applies under section 39(3) to taxing masters fulfilling their duty under the Legal Aid Act 1974, the Lord Chancellor may when exercising his function, properly have regard in the exercise of his discretion to other matters which it might not be appropriate for the taxing master to take into account.

12. Counsel is asked to advise on the proper construction of section 39(3). In particular, Counsel is asked to consider the following questions:-

(1) Does the duty to "have regard to the principle of fair remuneration" require the Lord Chancellor to set fees at a figure which always constitutes fair remuneration?

(2) In assessing what is fair remuneration, is the Lord Chancellor's discretion unfettered with regard to the matters to which he can reasonably take into account in deciding what is fair? If the Lord Chancellor considers a particular fee level to be fair in the context of all considerations other than other claims on the public purse and "Treasury constraints", can he fix a different fee level in the light of those other considerations?

(3) If the duty to "have regard to the principle of fair remuneration" does not on a true construction mean "shall set fees at a level which are fair remuneration" what weight must be given to the "principle of fair remuneration" by the Lord Chancellor in reaching his overall decision. Is the principle of fair remuneration a principle which, as was submitted in argument, a consideration of usually paramount importance which might be outweighed for considerations of important public policy for a particular year, or is it a principle of lesser constraint than that. In either case, what weight should be attached to other claims on the public purse and to questions of costs generally?

(4) To what extent does the Lord Chancellor in fixing fees under the Regulations have an active and continuing duty to keep under consideration fees so prescribed to ensure the Regulations continue to comply with his statutory duty? The original fees in the 1982 Regulations were fixed upon a basis of what the then taxing masters were paying. Since 1982 they have been uprated in accordance with the levels of inflation. The Lord Chancellor is not presently convinced that those fee levels represent other than fair remuneration but to what extent can the Lord Chancellor safely rely on that basis for the present fee structure four years later and in the light of the claims and evidence now put forward by the Law Society and the Bar Council? If the Lord Chancellor has an independent function to perform in keeping under review the levels of remuneration what steps should he properly take to discharge that function? The Lord Chancellor would reject "comparability" whether with Government lawyers or those employed

by the Crown Prosecution Service or otherwise as the proper basis for fixing fee levels.

Finally, in the consultations and discussions now to take place between the Lord Chancellor's Department and the Bar Council and Law Society, the question of payment by way of fixed fee for items of work will be discussed. Counsel is also asked to advise whether payment of the fixed fee for a particular item of work would be intra vires section 39(3) which requires fees to be fixed in respect of work "actually or reasonably done". If a fixed fee is payable for, for example, a guilty plea, and the time taken to undertake that task is when the fee is fixed uncertain does the payment of a fixed fee regardless of the time actually taken breach the concept of work "actually or reasonably done"? The "work done" would be the undertaking of the guilty plea but the amount of work required to perform that task will not be known at the time the fee is fixed and payment will be made irrespective of the time the task took. Counsel is asked to advise whether such fixed fees would in the circumstances be intra vires the section.

Counsel is asked to advise generally on the proper construction of section 39(3) and on the correct approach which should be taken by the Lord Chancellor with regard thereto and in making regulations under section 39. Counsel will please advise in writing.

Counsel will please advise.

ANNEX B.

THE LEGAL AID ACT 1974: SECTION 39(3)

O P I N I O N

1. Section 39(3) as enacted provided :-

"The Secretary of State in making Regulations under this Section as to the amounts payable to Counsel or a Solicitor assigned to give Legal Aid under this Part of this Act, and any person by whom any such amount falls to be assessed, taxed or reviewed under the Regulations, shall have regard to the principle of allowing fair remuneration according to the work actually and reasonably done".

It is now the Lord Chancellor, and not the Secretary of State, who makes Regulations under Section 39(1) and who is obliged by Section 39(3) to have regard to the principle of allowing fair remuneration.

2. We are asked a series of questions about the construction of this sub-section. They are principally concerned with whether or not, and if so to what extent, the Lord Chancellor may take account of costs or "affordability" in making Regulations under Section 39. We address the

questions individually asked later, but our analysis of Section 39(3) is as follows :-

(i) The notion of fairness imports a band or range rather than a single figure

The concept of fairness is far too fluid to allow the conclusion that, in any given specific circumstances, there is only one figure representing fair remuneration. As a matter of language, fairness of remuneration does not import any exact mathematical equation. This is also a matter of common sense: if £115 is a fair figure, it is most unlikely that it could convincingly be said that £110, and £120, are both unfair figures.

We consider that this first proposition is an important one because, for reasons which we shall develop, it eases the practical operation of the sub-section.

(ii) "Affordability" is not itself a test of fairness

The formulation "fair remuneration according to the work actually and reasonably done" describes a relationship between the

remuneration on the one hand and the work on the other. To this relationship, the question whether a given prospective level of remuneration can be afforded is extraneous or collateral. It is no more a measure of what is fair than the fact that a person is unable to afford the price of goods he desires to pay is any measure of the fairness of that price.

(iii) Comparisons may be a test of fairness

In saying this we do not have merely in mind such contentions as those made by Coopers and Lybrand that regard should be had to the levels of pay earned by other lawyers whose income comes from the public purse. That is certainly a consideration which the Lord Chancellor is, at lowest, entitled to take into account in deciding what is fair; but we have in mind a somewhat broader proposition relating to a comparison with the rates of increase in pay being awarded to other sectors. Suppose, for instance, that, in any given year, public sector pay rises generally are limited by the Government to 5%; that would be, in our view, a factor

which the Lord Chancellor would be entitled to take into account in deciding whether a pay claim by barristers of 40% would give rise to fair, as opposed to more than fair, remuneration.

Two things need to be said about this. First, we do not suggest that comparisons of this kind could ever be a sole determinant of what is fair remuneration; such a proposition would mean that any relationship between the prospective remuneration and the "work actually and reasonably done" would be wholly disregarded, and that, in our view, would be ultra vires the statute.

Secondly, this proposition means that "affordability" may become indirectly relevant to what is fair. It does not, however, follow that the second proposition set out at (ii) above is incorrect, or even qualified. There is a world of difference between the question, can this proposed increase be afforded? and the question, how far out of line is this proposed increase from others in the public sector pay round? The former question is not in our view of

itself relevant to the fairness of the proposed increase, whereas the latter is.

(iv) "Shall have regard to the principle of allowing fair remuneration" does not mean "shall allow (or fix, or ensure) fair remuneration"

Provisions in the statutes requiring decision-makers to "have regard" to specified factors are not uncommon. See, for example, in areas very different from that of Legal Aid, Section 25(1) of the Town and Country Planning Act 1971 (an Authority dealing with an application for Planning Permission "shall have regard to the provisions of the Development Plan ..") and Section 76 of the Education Act 1944 (Local Education Authorities "shall have regard to the general principle that ... pupils are to be educated in accordance with the wishes of their parents"; this was the provision discussed in Watt -v- Kesteven County Council (1955) 1 QB 408 cited to the Divisional Court by Leading Counsel for the Lord Chancellor in the Bar's recent challenge).

Such provisions undoubtedly condition the exercise of discretionary powers. Where a discretionary power is conferred with no specification of matter which must be regarded by the person exercising it, it will be for that person to decide what he will treat as relevant or irrelevant within, of course, the confines of the policy and objects of the enabling Act and subject to ordinary Wednesbury Rules. In Findlay -v- The Secretary of State [1985] AC 318 (which was concerned with the functions of the Home Secretary and the Parole Board in relation to Parole and Release on Licence) Lord Scarman at page 333F referred to "The New Zealand case of C.R.E.E.D.N.Z. Inc. -v- The Governor General (1981) 1 NZLR 172. The facts of that case bear no resemblance to this case, but the Judge did consider the question of the proper exercise of an administrative discretion in a situation where the Statute permits but does not require consideration of certain matters. The Judge said ....

"What has to be emphasised is that it is only when the Statute expressly or impliedly

identifies considerations required to be taken into account by the Authority as a matter of legal obligation that the Court holds a decision invalid on the grounds now invoked. It is not enough that the consideration is one that may properly be taken into account, nor even that it is one that many people, including the Court itself, would have taken into account if they had to make the decision."

Then Lord Scarman refers to a later passage ...

"There will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the Minister ... would not be in accordance with the intention of the Act."

"These two passages are, in my view, a correct statement of principle."

What a provision like the present does, in our view, is to give to the decision-maker a compulsory starting point for his decision-making process. The Lord Chancellor must <u>always</u> have regard to the

principle of fair remuneration. If he disregards it, his Regulations will be ultra vires. But there is little, it any, difference between "have regard to" and "take account of"; and it is, of course, commonplace for a decision-maker to take account of a factor, but in the end to make his decision despite, rather than because, of it. Thus, Section 39(3) does not have the effect that the Lord Chancellor is bound, in every case where he makes Regulations under Section 39, to cause fair remuneration to be provided for. This is supported by the Court of Appeal's decision in Watt -v- Kesteven County Council (1955) 1 QB 408 per Lord Denning at 424.

However, we are of the view that the formulation in Section 39(3) does more than identify what may be called a "compulsory Wednesbury-relevant" factor. It identifies what must be part of the policy and objects of the Act of 1974 - namely, that Counsel and Solicitors assigned to give Legal Aid shall receive fair remuneration according to the work actually and reasonably done. The word "principle" in the sub-section is important here: it imports the notion of

general application. A principle is akin to a rule; so that, one might say, the policy of this Act is that, as a general rule, fair remuneration should be paid.

So there are two elements here: first, the Act does not require fair remuneration to be ensured in every case; but secondly, as a general principle or rule, fair remuneration is to be provided.

(v) Ordinarily, Regulations made under Section 39 must provide for fair remuneration

This seems to us to be the result of the fore-going considerations. The Lord Chancellor may only depart from the principle of fair remuneration exceptionally. If he systematically departed from it, he would be travelling beyond the policy and objects of the Act; Padfield -v- The Minister of Agriculture (1968) AC 997. If there were an extremely grave and extremely sudden financial crisis, so that rates of Legal Aid remuneration had to be drastically reduced, lawyers might well continue to represent Legal Aid clients for very low rates of pay as part of their contribution in the Nation's

emergency. But they would hardly, according to the ordinary meaning of the word "fairness", be receiving fair remuneration. In such a case, the Lord Chancellor would have been justified in departing from the principle of fair remuneration because of the exceptional circumstances.

This means that the Lord Chancellor's right to depart from the principle of fair remuneration is so restricted as to be of very limited practical value.

(vi) <u>The references in the Act to Treasury Consent and the Provision of Money by Parliament are consistent with the analysis set out above</u>

There are a number of provisions in the Act showing that the money required to fund the Legal Aid provision is to be provided by Parliament, and Section 17(6) provides ...

"The sums required to meet payments out of Legal Aid funds ... shall be paid into that fund by the Lord Chancellor at such times and in such manner as he may with the approval of the Treasury determine,

and shall be so paid out of monies provided by Parliament."

Manifestly, the administration of this Statute involves Government interests other than the Lord Chancellor's Department, and in due course Parliament being persuaded to allocate to the Legal Aid scheme sufficient funds for it to be properly effective. This tends to support the view which we have expressed above, that comparisons with other prospective pay rises in the public sector are relevant to the application of the fairness principle. This is an important dimension in the understanding and application of the Statute; but it does not have the consequence that the proposition which we set out at (ii) above, that "affordability" is not of itself a test or a condition of fairness, is incorrect. Under Section 17(6) it is for the Lord Chancellor to propose the sums he thinks necessary, and to seek to obtain the consent of the Treasury. This is supported by the terms of Section 17(7) ..

"Estimates of the sums so required shall from time to time be submitted to the Lord Chancellor by the Law Society."

3. Consequences

(a) The first proposition set out above, that fairness represents a band or range rather than a single figure, has the important result that the Lord Chancellor inevitably has a discretion as to the point within the band or range of fairness as judged by him, at which he will provide for remuneration. In exercising this discretion, he may, in our opinion, undoubtedly take account of such issues as costs, and in doing so will only be subject to review on Wednesbury grounds.

(b) Additionally, the third proposition which we have set out (as to comparisons) means that the Lord Chancellor, when he comes to decide what the limits of the band of fair remuneration are, can look at the rates of increase in pay being gained by other public sector groups.

(c) These two foregoing considerations have the consequence that, in practice, the Lord Chancellor has a good deal of scope - "margin of appreciation" to use the language of Europe - when he comes to make new Regulations following his negotiations with the Bar and

Law Society. An acute difficulty would of course arise if he were convinced, after those negotiations, that rates of less than £x would be unfair, but he were unable to carry colleagues with him so as to provide at least £x. But, in view of the scope or margin which we have suggested exists, this may be a difficulty unlikely to arise in practice.

4. The Questions in our Instructions

The considerations which we have set out above deal with the first three questions specifically asked of us. The fourth question asks about the extent to which the Lord Chancellor is under a continuing duty to keep levels of remuneration under review so as to ensure, in effect, that Legal Aid lawyers continue to receive fair remuneration. To this we turn.

As a matter of the true construction of Section 39, it is important to notice that the duty imposed by Section 39(3) is adjectival upon the power conferred by Section 39(1) to make Regulations. Section 39(3) begins with the words ... "The Secretary of State, in making Regulations under this Section ..." However, there is little doubt but that a continuing oversight of fee levels is intended here. If, because

of inflation, fee rates earlier fixed ceased to represent fair remuneration, the Lord Chancellor would (exceptional circumstances apart) in effect have to make new Regulations. In fact, since 1982, fee rates have been uprated in accordance with inflation levels. But, by the same token of continuing oversight, it seems to us that if or when the lawyers' professional bodies put before the Lord Chancellor material tending to suggest that existing rates, even as uprated, do not represent fair remuneration, the Lord Chancellor is obliged to consider the matter and look to see whether or not the principle of fair remuneration requires a further increase. This position, in any case, is (in effect) the minimum guarantee of the Bar's "legitimate expectation" (and no doubt that of the Law Society too). It is, anyway, being fulfilled by the current negotiations and we do not see that this creates a new or separate difficulty. Our instructions say (in question iv):

> "The Lord Chancellor would reject 'comparability' whether with Government lawyers or those employed by the Crown Prosecution Service or otherwise as the proper basis for fixing fee levels."

As to this, the Lord Chancellor is not obliged by the Statute to apply, as if it were biblical text,

any particular comparison; his duty is to sift and assess the material in (eg.) the Coopers and Lybrand report as a reasonable Minister. He may find it convincing overall - he may not; he may find it convincing in parts, but with some flaws; whichever of these views he forms, he must take it into account when he comes to decide on levels of remuneration together with other factors which we have advised he is also entitled to take into account.

5. We are lastly asked to advise whether Regulations which provide for a fixed fee for a particular class of work (eg. representation upon a guilty plea) would be ultra vires Section 39(3) because a fixed fee cannot by definition reflect "the work actually and reasonably done."

The answer to this seems to us to involve the converse of our first proposition set out above, namely that fairness imports a range or band rather than a single figure. While a range or band in money terms may represent what is fair remuneration for a particular piece of work, equally a specific single sum may be said to be fair remuneration for a range or band of work within a given class. That said, we believe that provision for a fixed fee for such an item of work as a Guilty Plea, if made in

new Regulations, should be subject to a long-stop discretion to give an increase if the particular circumstances so require. Guilty Pleas are very variable indeed, in the time they take both to prepare and argue; many are extremely short and simple, others are quite the opposite. There are, we think, dangers not so much in having a fixed fee system as in having such a system with no scope for discretion, as it were, at the edges.

6. It is right at the end to identify the root of such difficulties as there are with Section 39(3). It is that its terms give rise (on the face of it) to a tension between the principle of fair remuneration on the one hand and cost constraints on the other; and this tension marks the difficulty of the Lord Chancellor's task in making Regulations under Section 39. In the world of theory (but not the real world) this difficulty is removed by taking either of the respective extreme positions (a) that fair remuneration, irrespective of costs and Government pay settlements in other fields, must always on a continuing basis be provided; or (b) that, provided a nod of acknowledgment is given to what fairness requires, the Lord Chancellor is entitled when he makes Regulations to regard costs as determinative.

For the reasons we have given above, we regard each of these approaches as wrong.

John Mummery

JOHN MUMMERY

JOHN LAWS

2 Garden Court
Temple
EC4.

18 April, 1986.

CC/BG

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From The Secretary of State for Wales

The Rt Hon Nicholas Edwards MP

21 May 1986

Dear Richard

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (PCA) - PROPOSED BILL 1986/87

Thank you for copying me your letter of 28 April to William Waldegrave setting out the awkward position now reached with proposals for legislation for the Parliamentary and Local Ombudsmen.

I agree overall with the way you set out the options. Having seen them set out, I hold the view that the third option, ie to proceed with the PCA Bill without any provision for Commissioner for Local Administration (CLA) amendments in either a PCA or a Local Government Bill, is not one that should be pursued. Whether we like it or not, the PCA Bill is likely to be regarded by the world, and back bench opinion in particular, as an Ombudsman Bill and in their eyes the outstanding local Ombudsman matters may well be seen as more important that the extension of the PCA's jurisdiction.

That leaves us with two difficult options: the PCA Bill, where I agree with your view that CLA provisions could put the whole Bill at risk; and the Local Government Bill, where I can well understand that, in addition to the risks you specify, Kenneth Baker will be under pressure to include other provisions in his Bill, of even higher priority than the CLA.

In the circumstances I agree that officials should meet and advise us in the light of the Widdicombe Report; my officials will be involved in those discussions.

I am sending a copy of this letter to the Prime Minister, the members of H Committee, and Sir Robert Armstrong.

Yours ever

Peter

The Rt Hon Richard Luce MP
Minister of State
Privy Council Office

PARLIAMENT Regulation PM15

PRIVY COUNCIL OFFICE

WHITEHALL. LONDON SW1A 2AT

21 May 1986

Dear Willie,

As you know, the Chairman of Ways and Means, Harold Walker, approached me recently about a review of Private Bill procedure by a Joint Committee of both Houses.

He had been experiencing difficulties over specific points on particular Bills, for example, over maintaining the quorum for the Felixstowe Dock and Railway Bill. More broadly, however, there was evidence of growing dissatisfaction amongst some Members with what they see as the outdated character of Private Bill procedures as a whole.

The terms of reference proposed by Harold Walker were accordingly in very general terms, covering not only what changes were desirable in Private Bill procedure, but also whether there were matters at present dealt with by Private Bill which could more appropriately be dealt with in some other way.

Any enquiry of this scope is bound to be lengthy. Having, therefore, consulted with those of our colleagues who are most frequently concerned with Private Bill legislation, and through the usual channels, I thought it worthwhile to suggest that the proposed terms of reference might be limited to a straightforward review of Private Bill procedures, within their existing scope. This would have covered the Chairman's immediate problems and been of no disadvantage to the Government.

From further discussion with Harold Walker, however, it became clear that he strongly preferred the wider review he had originally proposed, and was not worried about any consequent delay over its recommendations. I do not consider that these can now emerge until late next Session at the earliest, and no decisions on them would be called for until after the next General Election. In view of the links between Private and Hybrid Bill procedures, I have already made clear in the House that any review will not affect Bills already in the legislative programme.

./...

Rt Hon Viscount Whitelaw CH MC
Lord President of the Council

I accordingly propose, subject to your agreement, to tell the Chairman of Ways and Means that we will be tabling, as soon as possible, the necessary Motions in the two Houses to set this review in train with the following terms of reference:

> 'That it is expedient that a Joint Committee of Lords and Commons be appointed to examine the processes of enacting Private Legislation and consider whether:
>
> (a) there are any matters of a kind at present dealt with by Private Bill which could more appropriately be dealt with in some other way, taking account of the interests both of promoters and other affected parties;
>
> (b) any changes are desirable in Private Bill procedure; and
>
> (c) any amendments are desirable to the Private Legislation Procedure (Scotland) Act 1936 and the procedure thereunder;
>
> and to consider whether any amendments are desirable to the Statutory Orders (Special Procedure) Act 1945.'

The only difference to the terms of reference which the Chairman originally proposed is the insertion of 'taking account .... affected parties' in (a). The purpose of this addition is to try and ensure that the interests of promoters are considered as well as those of objectors. This seems uncontroversial.

I am copying this to the other members of L Committee, to other Ministers in charge of Departments and Sir Robert Armstrong.

Yours

John Biffen

JOHN BIFFEN

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000
DIRECT DIALLING 01-218 2111/3

MO 21/1E

15th May 1986

Dear Willie,

Thank you for sending me a copy of your minute of 30th April.

I agree we should proceed with the legislative programme on the basis as set out in your letter. You indicate, however, the possibility that, if a serious slippage should occur, deletions from the programme may be necessary later in the year. I would be most concerned if there were to be any likelihood of this affecting the Ministry of Defence Police Bill, to which I attach considerable importance.

I am copying this letter to the recipients of your minute.

Yours ever,

George

George Younger

The Rt Hon Viscount Whitelaw PC CH MC

Parliament : Legislation

PG 15

With the Compliments
of the
Private Secretary
to the
Lord Privy Seal

cc M Tawney
M Galard
A Longden

PRIVY COUNCIL OFFICE

WHITEHALL. LONDON SW1A 2AT

13 May 1986

cc BG

NTM

Dear Norman.

Thank you for your letter of 23 April about Austin Mitchell's Company Political Donations (Government Contractors) Bill and the general procedures for giving advice to Ministerial colleagues about voting in any divisions that take place on Bills introduced under the Ten Minute Rule.

There is, of course, a regular flow of Bills introduced throughout each Session under this procedure. In the majority of cases, where there is no overriding Government interest involved, it would seem an unnecessary if marginal, commitment of Government prestige for Ministers to be seen to express a collective view, particularly since, as you say, there are other effective ways of making sure that, if necessary, these Bills get blocked. In such instances, therefore, I think that it is generally right and tactically safer for Ministerial colleagues present to be advised to abstain in any division that occurs on these occasions, rather than to vote against.

I entirely agree, however, that Ten Minute Rule Bills are occasionally introduced of a kind where the need for the Government to be clearly seen to oppose a particular proposal must be the determining factor, and that in such cases Ministers present should be advised to vote against if a division is called. The Business Managers do in fact advise Ministers to vote against particular Ten Minute Rule Bills - Dr Marek's Lords Reform Bill and Tony Benn's General 'Reform' Bill are two recent constitutional examples that come to mind. You will recall also that the advice in relation to Dennis Canavan's Ten Minute Rule Bill on the prohibition of the use of plastic bullets in the UK was for Ministers to vote against it.

Inevitably which Ten Minute Rule Bills are so fundamentally objectionable as to require overt opposition of this kind must be to some extent a matter of personal judgement. I did not myself consider that Austin Mitchell's Bill necessarily fell on that side of the divide.

./...

Rt Hon Norman Tebbit MP
Chancellor of the Duchy of Lancaster

Perhaps, however, I might take the opportunity of your letter to remind colleagues that if they consider it of particular importance that a Ten Minute Rule Bill within their responsibilities should be seen to be opposed by the Government, they should make their view known to the Legislation Committee.

I am sending a copy of this letter to members of L Committee, other Ministers in charge of Departments and to Sir Robert Armstrong.

Yours

John Biffen

JOHN BIFFEN

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

13 May 1986

Dear Richard

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION BILL

I have seen the recent exchange of correspondence you have had with Barney Hayhoe, Malcolm Rifkind and William Waldegrave.

As far as policy clearance is concerned, you will have seen the letters from John MacGregor and Douglas Hurd supporting Barney's proposed Health Service Commissioner amendments and you may take it that you have H Committee agreement. You may also take it you have QL agreement to include these in your Bill, on the understanding that they are minor, uncontroversial and will not add significantly to the drafting burden.

I am, however, very concerned with the issues raised in the exchange of letters between yourself and William Waldegrave. I do not wish to enter into the debate at present, but I must stress that the Bill cannot be allowed to proceed if either by its contents or its omissions it is likely to generate any controversy which would prejudice it following Second Reading Committee procedure in the House of Commons. I hope that you and William will be able to reach early agreement on the best course to follow to avoid this risk.

I am sending a copy of this letter to the Prime Minsiter, the members of H Committee, the members of QL Committee, other Ministers in charge of Departments and to Sir Robert Armstrong.

Yours ever

The Rt Hon Richard Luce MP

PARLIAMENT legislation PTS

010

CF is this yours?

Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-213 4884
Switchboard 01-213 3000

Nicky.

Parliamentary Under Secretary of State

NBPM.

Ms Clare Short MP
House of Commons
LONDON SW1A OAA

12 May 1986

Dear Clare,

At the end of Committee Stage of the Wages Bill I promised to write to you as quickly as possible about the effect on transport authorities and local authorities generally of our bringing forward the commencement date for the changes in redundancy rebates. I had hoped to write to you within a few days of our discussion but I am afraid discussions with the Department of Transport and the Department of the Environment are still continuing.

I am grateful to you and Dave Nellist for raising this issue. I now better understand the particular difficulties of the Passenger Transport Authorities and the District Councils outside the conurbations who have bus undertakings in the period immediately before privatisation and these are now being considered.

I shall not be able to give you a substantive answer to your concerns before the Bill completes its Report and Third Reading Stages but I certainly expect to be able to deal fully with the question before the Bill comes back to the House of Commons.

I do appreciate the courteous way you and Dave Nellist raised this problem and I hope you will accept that we need a little while longer to pursue it with my colleagues in the Departments concerned.

I am copying this to Dave Nellist.

Yours sincerely,
David

DAVID TRIPPIER

---

cc Members of 'L' Committee

DT4ABC

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

OUR REF: R/PSO/6147/86

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON SW1

7 May 1986

Dear Willie

LEGISLATIVE PROGRAMME : 1986/87 AND 1987/88 SESSIONS

Thank you for sending me a copy of your minute of 30 April to the Prime Minister on the leglislative programme for the 1986/87 and 1987/88 sessions.

I am of course grateful for colleagues' agreement that places should be found in the 1986/87 programme for legislation on Marine Pilotage and on a new Dartford Crossing. I explained in Cabinet the importance and urgency of these measures, and I am glad that they can now go ahead. I recognised the importance of avoiding slippage in timetables, and will, as you ask, keep a close check on the preparation of these two Bills - though I do not expect problems, as instructions for the Pilotage Bill are already with Parliamentary Counsel and drafting is, I understand, under way, and (as I explained in my letter of 28 February) instructions to Counsel on the Dartford Crossing Bill can be submitted in batches from about the end of June onwards.

I am otherwise content with QL's proposals, and have no other comments on your letter.

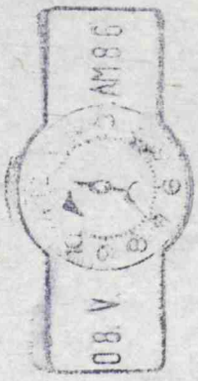
I am copying this letter to other members of the Cabinet, members of QL Committee, the Minister of State, Privy Council Office, First Parliamentary Counsel, and to Sir Robert Armstrong.

Yours ever

Nicholas

NICHOLAS RIDLEY

PARLIAMENT: Legislation : Pt 15



CONFIDENTIAL FILE DA

10 DOWNING STREET

From the Private Secretary

2 May 1986

The Prime Minister has now seen the Lord President's minute of 30 April about the legislative programme for the 1986/7 and 1987/8 Sessions. Subject to the views of colleagues she is content with what is proposed.

(Timothy Flesher)

Miss Joan MacNaughton,
Lord President's Office.

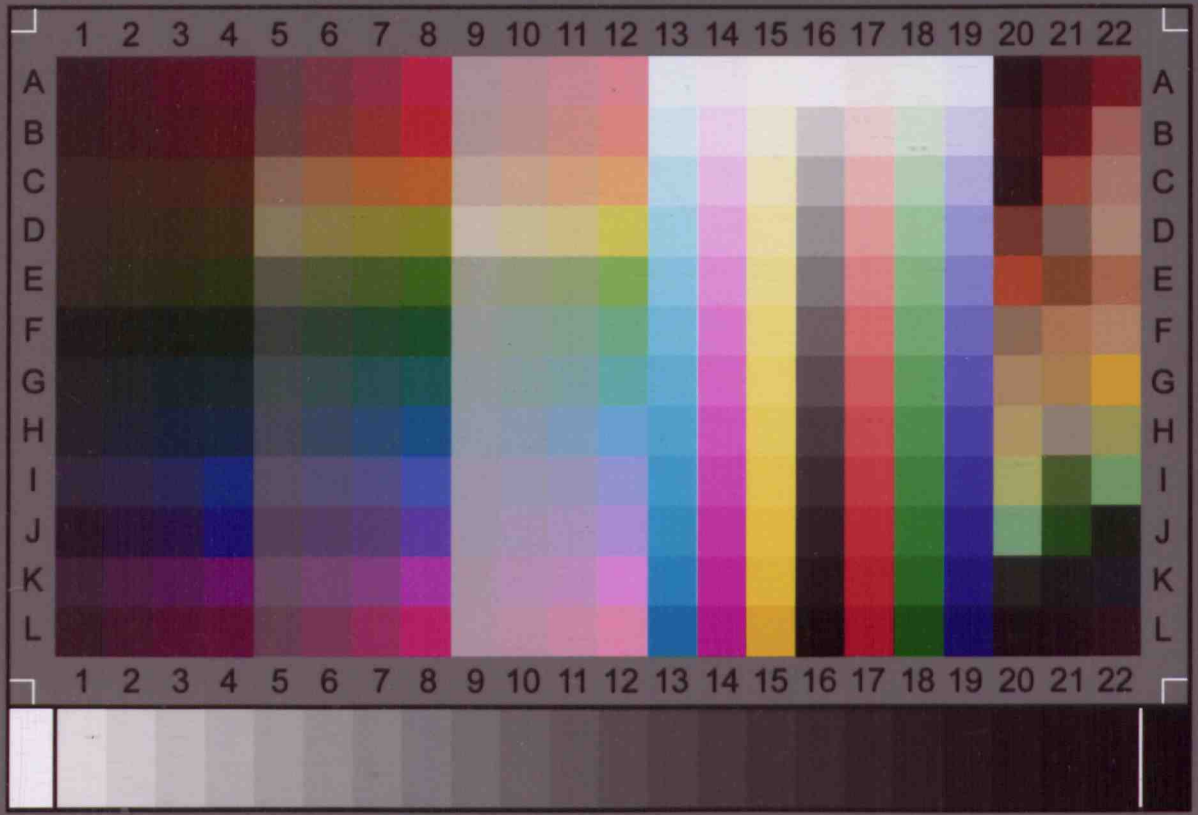
CONFIDENTIAL

PART 14 ends:-

LPC to PM 30.4.86

PART 15 begins:-

TF to PS. LPC 2.5.86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