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ADVANCE COPY OF ITEM 1 OF MINUTES OF H COMMITTEE
HELD ON WEDNESDAY, 16 JULY 1980.

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1. RIGHT TO BUY: ANTI-AVOIDANCE AMENDMENT

The Committee had before them letters of 9 July¹⁹⁸⁰ from the Secretary of State for the Environment to the Home Secretary, of 10 July 1980 from the Home Secretary to the Secretary of State for the Environment, of 14 July 1980 from the Lord Chancellor and from the Solicitor General to the Secretary of State for the Environment, and of 15 July¹⁹⁸⁰ from the Secretary of State for the Environment to the Home Secretary ^{about}

amendments to the Housing Bill to ~~ensure~~ ^{prevent} evasion of the right to buy ~~provisions~~.

THE SECRETARY OF STATE FOR THE ENVIRONMENT said that an amendment to ^vprevent local authorities evading the right to buy ~~on a large scale~~ had been included in the list of essential amendments that might be controversial attached to his letter of 19 June 1980 to the Lord President. The Chief Whip, Lords and the Minister of State, Department of the Environment (Minister for Housing and Construction) had agreed that the amendment should be tabled on Report. The need was to block two loopholes. The first related to the ability of local authorities to dispose of property without obtaining necessary Ministerial consent and for the purchaser to get good title by virtue of section 128 of the Local Government Act 1972. This would be a continuing ~~problem~~ ^{possibility}.

The second related to disposals of some of the housing stock on short leases which authorities could legitimately make until the provisions in part V of the Housing Bill came into force. The Lord Chancellor and the Solicitor General had put forward objections of substance to his initial proposals. He proposed therefore to adopt a different approach. The first loophole could be blocked by disapplying section 128 of the Local Government Act 1972. Disposals of individual dwellings to sitting tenants

Unless the Bill were amended.

or to other individuals wanting a dwelling for use as their only or principal home would continue to have the full protection of the section. But if an authority disposed of its housing stock outside the general consent ~~§~~ for a special consent ~~§~~ in other circumstances, section 128 would not apply and the transaction would be void. ^{tabling of the} The amendment that would be required would however draw attention to the second loophole. Local authorities could at present divest themselves of properties without his consent by granting short leases of up to seven years. The bill as drafted would block off the loophole once it came into force. But authorities would still be able to divest themselves of property in the ^(of about three weeks) period before Royal Assent, thus frustrating the Government's intentions. To overcome this he proposed that the amendment should have effect from the day after it was tabled. Such a provision had a parallel, if not a direct precedent, in ^{that case} changes in taxation ~~which~~ came into force on the day on which they were announced.

THE LORD CHANCELLOR said that the Secretary of State for the Environment's latest proposals, which followed ~~of~~ discussions between officials, overcame most of the objections that he had identified. He remained unconvinced ^{however} of the need for amendments of this nature; while it was in theory open to authorities to dispose of their housing stock in order to frustrate the Government's intentions, it was unlikely that in practice they would wish to do so. The first amendment would mean an increase in bureaucracy and in the power of the executive; he would not however wish to press his objection to it. But the second ^{proposed} amendment was clearly retrospective in its effect. It would create a

dangerous and damaging precedent, and would be extremely controversial. He could not support it.

THE SOLICITOR GENERAL said that he had had two main objections to the Secretary of State for the Environment's initial proposals. They would have called into question the validity of completed transactions. And they would have given the Secretary of State power to make unrestricted provisions; the exact powers ^would more properly have been prescribed with more certainty. The Secretary of State's new proposals met both of these objections.

In discussion it was argued that the Housing Bill had deliberately been drafted on the assumption that certain authorities would do all they could to block council house sales. There was evidence that ^{some authorities} ~~they~~ had been exploring the legal options that would be open to them. They would be careful not to disclose their hands until it was too late for the Government further to amend the Bill. The Government would then appear to have been outmaneuvered, and would be exposed to much criticism for ^{having failed} ~~setting~~ to give tenants the right to buy. Against this it was argued that councils which sought to frustrate the right to buy would themselves be running very great political risks. The Government might well benefit from their attempts so to do. It would be wrong to lay too great a weight on the possibility of avoidance. Authorities were unlikely to be able to act sufficiently quickly to anticipate the Bill coming into effect. Government supporters on any authority that sought to do so would undoubtedly bring the matter to the Government's attention. It

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would be open to the Government to consider introducing a short Bill to prevent such obvious manoeuvres being successful.

In further discussion it was argued that the two amendments were in practice closely connected. But while the first amendment was acceptable to the Committee, the second amendment raised very great difficulties. The introduction of an element of retrospection was not without parallel in taxation and nationalisation legislation. But it would set a very dangerous precedent and would be extremely controversial. It would require lengthy debate in the House of Lords, and this could jeopardise the timetable for the Bill. There were other approaches that might overcome the problem. It should be possible to secure an injunction to prevent an authority disposing of property without requisite Ministerial consents if that were seen to be its intention. If it appeared that an authority had made a disposal for ulterior motives the decision might be subject to judicial review. This might also overcome the related problem, which had not previously been drawn to the Committee's attention, of appropriation by an authority of its housing stock for other purposes which would remove it from the scope of Part V of the Bill. Urgent consideration should be given to these possibilities.

THE HOME SECRETARY, summing up the discussion, said that members of the Committee differed in their assessment of the risk of local authorities seeking to frustrate the operation of the Bill in the ways suggested, but they agreed that the amendment to block off the first loophole should be tabled as soon as possible for the report stage of the Bill. A majority of the Committee had very grave objections, both political and legal, to the second amendment. If, in practice, authorities did seek to frustrate the Government's intentions, there was a possibility that existing legal remedies would overcome the difficulties. The Law Officers, in consultation with the Lord Chancellor, the Secretary of State for the Environment, and the Minister of State, Department of the Environment (Minister for Housing and Construction) should consider urgently whether it would be possible to safeguard the position during the period before the Bill received Royal Assent without further amendment. It was, of course, open to the Secretary of State for the Environment to come back to the Committee with proposals for a further amendment which, if it were required, would have to be put down on Third Reading. It was clear, however, that the Committee would not look with favour on any amendments that involved retrospection.

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The Committee -

1. Agreed that the Secretary of State for the Environment should arrange for an amendment to be tabled to the Housing Bill at Report stage which would disapply Section 128 of the Local Government Act 1972 on the lines of that enclosed with his letter of 15 July 1980 to the Home Secretary.
2. Invited the Law Officers, in consultation with the Lord Chancellor, the Secretary of State for the Environment and the Minister of State, Department of the Environment (Minister for Housing and Construction), to consider whether it would be possible to overcome the problem of disposals or appropriations before Royal Assent by means of existing legal remedies; and if not, to consider whether additional safeguards might be incorporated in the Bill without having recourse to retrospection, and to report the outcome to the Committee.

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HOUSING BILL: ANTI-AVOIDANCE

At H Committee this morning the Committee agreed an amendment to be tabled which would prevent local authorities, to some extent, avoiding the right to buy provisions of the Bill. They did not agree an amendment which would incorporate an element of retrospection by backdating their enactment to now, a provision which would nullify actions by local authorities in granting leases.

DOE Ministers believe that this gap would be potentially dangerous. The Secretary of State, therefore, would like to discuss with the Prime Minister the action to be taken, if any, and whether or not a discussion during the Parliamentary Business section of Cabinet tomorrow would be helpful. The Home Secretary has been consulted by the Secretary of State and has suggested that he sees the Prime Minister very quickly on all this.

[DOE]

MS

16 July, 1980