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Prime Minister

WJ
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PRIME MINISTER

It have agreed to open all party talks on a Bill of Rights. Mr Sym and Mr Atkins will consider how the minority in Northern Ireland should be represented. It felt the Govt should give cautious support for a Bill of Rights. Mr Whitelaw is sceptical and suggests King's line may need to be reviewed.

BILL OF RIGHTS

The Home and Social Affairs Committee discussed under my chairmanship on 1 June the report by officials commissioned by the Cabinet in April 1980 about the implications of a possible Bill of Rights. There was general agreement in principle that we should now honour our Manifesto commitment by seeking to arrange all-party talks on the desirability and possible content of such a Bill. We agreed that all the parties in the House of Commons with Members representing constituencies in Great Britain should be invited to take part in the talks, together with the Ulster Unionists and the Democratic Unionist Party. The Chancellor of the Duchy of Lancaster is to consider with the Secretary of State for Northern Ireland how the minority in Northern Ireland should be represented at any talks. The attitude of the Labour Party towards the proposed talks is likely to be uncertain and divided. The Committee agreed that lack of co-operation by the Labour Party should not in itself prevent the talks from being held or, indeed, prevent a Bill of Rights from being introduced at a later stage if that seemed the right course in the light of our consultations; but the Chancellor of the Duchy has agreed to give the shadow Leader of the House advance warning of our intentions. He and I will then consider further how and when the invitations to the suggested talks might be issued, and report our conclusions to you.

WJ
4/6

The Committee felt that it would not be practicable for the Government to adopt an attitude of strict neutrality in any all-party talks, and that we should embark on them, assuming that they can be arranged, with the object of making a cautious advance towards an agreed Bill of Rights. The general view was that the Bill should be limited to incorporating the European Convention on Human Rights into our domestic law, though some members of the Committee, including the Attorney General, would have preferred to include further safeguards of fundamental rights not explicitly covered by the Convention. Others, including myself, while not objecting to the opening of all-party talks on the lines I have indicated, have yet to be fully convinced of the case for a Bill of Rights, and believe that we may well have to modify our opening position in the light of any further difficulties identified as discussions progress.

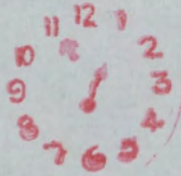
I am copying this minute to other members of the Cabinet, to the Attorney General and Chief Whip, and to Sir Robert Armstrong.

WJ

3 June 1981



- 4 JUN 1981



RESTRICTED



Legal
Roadwe

THE HOME SECRETARY

W
25/6

BILL OF RIGHTS

I have seen the Defence Secretary's minute to you of 16 June and wish to record my agreement with him that the danger of our Service disciplinary procedures being held to be incompatible with Article 5 or Article 6 of the European Human Rights Convention is a real one. I also agree that the risk of challenge will be significantly increased if the Convention is incorporated in our domestic law. If the exigencies of Service discipline make it impossible for us to amend our procedures so as to bring them unquestionably into conformity with the Convention - and I read the Defence Secretary's minute as indicating that that is his view - then I further agree with him that the only satisfactory course is for the Bill of Rights to include, from the outset, an express exception (what his minute describes as an "exemption clause") to cover us. I add that, if this is what we intend, I do not see how we can avoid revealing it at some stage during the all-party talks. For my part I would prefer to come out into the open as soon as possible.

I am copying this minute to the Prime Minister, the other Members of the Cabinet, the Chief Whip and Sir Robert Armstrong.

M.H.

24 June, 1981

RESTRICTED

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Legal Proc
Oct. 79 Bill of Rights

From: THE PRIVATE SECRETARY



Legal Procedure
HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

CF?
17 JUN 1981

Dear Mike

Thank you for your letter of 8th June to John Halliday asking for a draft reply to Mr. Beith's latest letter to the Prime Minister on all-party talks about a Bill of Rights.

As you know, the Home Secretary reported to the Prime Minister on 3rd June the conclusion reached by Home and Social Affairs Committee that the Government should now seek to arrange all-party talks. The Committee decided that, in view of the likely attitude of the Labour Party, the Chancellor of the Duchy of Lancaster should give the shadow Leader of the House advance notice of the Government's intentions. Until then we do not think it is possible to add to the Prime Minister's letter of 6th May to Mr. Beith.

... I am enclosing a draft reply, which subject to any views David Heyhoe might have, you might invite the Prime Minister to send.

Yours ever
A. P. Jackson

A. P. JACKSON

Mike Pattison, Esq.

DRAFT LETTER

ADDRESSEE'S REFERENCE

TO	ENCLOSURES	COPIES TO BE SENT TO
Alan Beith Esq MP House of Commons LONDON SW1A 0AA		
(FULL POSTAL ADDRESS)		(FULL ADDRESSES, IF NECESSARY)

LETTER DRAFTED FOR SIGNATURE BY Prime Minister
 (NAME OF SIGNATORY)

Thank you for your letter of 3 June about my reply to David Alton's supplementary question on 14 May about a Bill of Rights.

In referring to the question of entrenchment provisions I had in mind that these are normally regarded as a desirable characteristic of a Bill of Rights. Such provisions, however, are difficult to reconcile with our doctrine of Parliamentary Supremacy. The absence of such provisions from your Bill precisely illustrates the point I was making.

As to all-party talks, I recognise that, as you say, there is substantial support for a Bill of Rights in all parties but there is nothing I can add at the moment to my letter to you of 6 May.

*With the compliments of
the Attorney-General*

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

01 405 7641 Extn. 3201

CM 16/6

MO 21/8/5

HOME SECRETARYBILL OF RIGHTS

In your minute of 3rd June you informed the Prime Minister of the conclusions reached by the Home and Social Affairs Committee on the question of holding all-party talks about a possible Bill of Rights. Whilst I am not personally in favour of this course, I am writing here not on general grounds but to put on record the concern of the Ministry of Defence about the potential implications of such legislation in the field of military discipline.

2. The problem was, of course, explained in some detail in your memorandum H(81)37. Basically it concerns the powers conferred on commanding officers by the Service Discipline Acts to award sentences of detention. There is a danger that if these summary powers came under judicial scrutiny they might be held to conflict with the provisions of Article 5 or Article 6 of the European Convention on Human Rights. So far the European Court of Human Rights has not had occasion to pronounce on them, though its judgement in the so-called Dutch Soldiers Case of 1976 suggests that it might not take a particularly favourable view in the event of such proceedings. If the Convention is incorporated in domestic law this will significantly increase the risk that our summary procedures will come under challenge. Since we regard the summary powers of commanding officers as essential for reasons of operational efficiency this is an eventuality which we would wish to avoid.



3. I understand that at the meeting of the Home and Social Affairs Committee on 1st June it was suggested that if it was established by judicial process that our summary procedures were in conflict with the Bill of Rights the situation could be remedied by seeking parliamentary authority for a derogation. Much, however, would depend on the situation in the House of Commons at the time but even under favourable circumstances there would be a period of uncertainty during which the administration of Service discipline might be seriously impaired. Sufficient justification exists for an exemption clause to be included in any Bill of Rights, and I would like to press for this to be included from the outset, since I would wish to avoid having to initiate the proposal, and expose the wider difficulty, during the course of all-party talks.

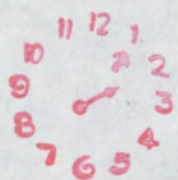
4. I am copying this minute to the Prime Minister, to other members of the Cabinet, the Attorney General and Chief Whip, and Sir Robert Armstrong.

J. Dawson. (Private Secretary)
(Approved by Mr Nott and signed in his absence).

Ministry of Defence

16th June 1981

16 JUN 1981





10 DOWNING STREET

From the Private Secretary

13 June 1981

Dear Andrew

The Prime Minister was grateful for the Home Secretary's minute of 3 June reporting the conclusions of the Home and Social Affairs Committee on a possible Bill of Rights. She has noted this without comment.

I am copying this letter to Private Secretaries of other members of the Cabinet, to the Attorney General and the Chief Whip, and to Sir Robert Armstrong.

Yours sincerely
William Kickett

Andrew Jackson, Esq.,
Home Office.

file

MFJ

8 June 1981

I am writing on behalf of the
Prime Minister to thank you for your
letter of 3 June.

I will place your letter before
the Prime Minister and a reply will
be sent to you as soon as possible.

MAP

Alan Beith, Esq., M.P.

BL

MFJ

cc CDLO

8 June 1981

I enclose a letter to the Prime Minister from Mr. Alan Beith, M.P., asking that the Government should proceed rapidly to all-party talks about a Bill of Rights.

I should be grateful if, in consultation with David Heyhoe (Chancellor of the Duchy's office), you could let me have a draft reply for the Prime Minister's signature. It would be helpful if this could reach me by Friday 19 June.

B/f →
MAP

J.F. Halliday Esq
Home Office

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

H(81)37
21 May 1981

Whe
This comment has been
passed to the Cabinet Office Secretary
Prime Minister COPY NO 2

CABINET

WN
46/5
The Home Secretary does not favour
incorporating the European Convention
on Human Rights into our
laws. He asks for colleagues
views on opening all party talks
and on what HMG's position
should be.

HOME AND SOCIAL AFFAIRS COMMITTEE

A BILL OF RIGHTS

Memorandum by the Secretary of State for the Home Department

ACTION
*I agree that the
disadvantages outweigh the
advantages. Unless we
are in a better position
to deal with it.*

In our Manifesto we referred to a Bill of Rights as one of the important matters we should wish to discuss with all parties. This commitment has been repeated on several occasions in the debates on the Bills introduced by Lord Wade to incorporate the European Convention on Human Rights into our domestic law, most recently by the Solicitor-General during the Second Reading debate in the Commons on 8 May when he said that the Government saw these all party talks as very important.

2. In April 1980 I was asked by the Cabinet (C(80)17th meeting) to arrange for officials to study the implications of a Bill of Rights for existing legislation, to up-date two earlier reports on the subject as necessary, and to report to Ministers on the questions requiring decision. Officials have now produced the attached report. I think the report, though it does not represent a fully agreed view of all departments, correctly identifies the main advantages and disadvantages of incorporating the European Convention into domestic law as:

Main advantages

- (a) a coherent code from which it would be difficult to depart later;
- (b) some possible improvement in the rights of individuals;
- (c) some more immediate access (than by recourse to Strasbourg) for the individual to remedies; and
- (d) some improvement in our international standing.

Main disadvantages

- (a) a loss of clarity and certainty from our law;
- (b) an inappropriate shift in the balance of power from Parliament to the judiciary;
- (c) probable costs; and
- (d) serious difficulties for particular areas of our law and practice.