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MR HALSEY
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DEPARTMENT OF EDUCATION AND SCIENCE

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FROM THE SECRETARY OF STATE

22 June 1983

SCI

Dear Willie,

CORPORAL PUNISHMENT IN SCHOOLS

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

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

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

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

Lawson
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The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
68 Whitehall
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CONSULTATIVE DOCUMENT ON CORPORAL PUNISHMENT IN SCHOOLS

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

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

Discipline in schools

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

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

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

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

The chosen method of implementing the Court's judgment

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

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

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- b. readily understood by staff, parents and pupils;
- c. accessible to parents without undue difficulty.

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

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

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

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

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

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

The practical application of the exemption system

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

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13. There are three main possible approaches:

- (i) to leave the initiative to parents who have a conviction against corporal punishment;
- (ii) to leave the initiative to parents who do not object to the use of corporal punishment on their children;
- (iii) to seek a formal response from all parents.

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

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

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

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

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

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

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

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

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

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