



CONFIDENTIAL

HOUSE OF LORDS,
LONDON SW1A 0PW

29 November 1985

1. DN to see

The L/Ch doesn't like the "compromise" prepared by Ch/EA. We need to await the Ch's response.

2. P.c.

My dear Willie:

MISUSE OF DRUGS BILL:

DISCLOSURE OF INLAND REVENUE INFORMATION

At a brief discussion about disclosure of Inland Revenue taxpayer information after Cabinet yesterday I agreed with Douglas Hurd that I would write about the constitutional problems which I see in enabling the police or prosecuting authority to seek an order in the courts requiring the Inland Revenue to produce confidential taxpayer information as part of the process of tracing the proceeds of drug trafficking.

The matter starts with section 197 of the Insolvency Act 1985 upon which, I understand, the draftsman based clause 15 of the Misuse of Drugs Bill. Section 197 enables the Official Receiver or the trustee in the debtor's bankruptcy to require the Inland Revenue to produce taxpayer information to the court about the debtor's affairs. I see this as a necessary part of the winding up process in which the receiver or trustee is acting in the interests of the debtor.

The power proposed for the police or prosecuting authority under clause 15 has an entirely different object. That object is to enable the police or prosecuting authority to seek production of taxpayer information in the course of tracing the the proceeds of drug trafficking. The clause at present is

The Right Honourable
The Viscount Whitelaw, CH., MC.,

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restricted to taxpayer information concerning the defendant's affairs. However the proposals in recent correspondence go further. They are to allow the police or prosecuting authority to seek an order requiring production of taxpayer information about third parties' affairs where the proceeds of drug trafficking may have passed to that named party.

This is quite distinct from the ascertainment of liability for or collection of revenue. Even the limited proposal in clause 15 would raise the problems of Revenue confidentiality to which Nigel Lawson refers in his letter of 22nd November. The proposal that those problems could be overcome by application by the police to the courts troubles me. Such an application might seek to impose a duty on the Inland Revenue to produce material which the Revenue might find necessary to resist. The Crown would be put into a position where it sought to justify protecting the statutory confidentiality of information which the taxpayer was obliged, under threat of penalty to reveal for tax purposes.

*This seems
unlikely to
work if only
the Revenue
take the
initiative.*

An alternative solution might lie in enabling the Revenue to apply to the court seeking the court's leave to breach the statutory duty of confidentiality by producing named taxpayers' information where the Revenue is satisfied that that information is relevant and essential in tracing the proceeds of trafficking in drugs and where there is no overriding objection to production.

I am copying this letter to the Prime Minister, the members of H Committee and Michael Havers and to Sir George Engle and Sir Robert Armstrong.

YLS:


