

CCBG

Prime Minister (2)



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You will see that the Home Secretary  
proposes

24 February 1986

(i) not to stand in the way of  
removing the broadcasters  
exemption, and

Dear Mark

(ii) to suggest the replacement of the  
"lavender list" with a special "deprave or  
corrupt" clause for children. MEA 2412

At Cabinet on Thursday the Home Secretary said that he would have a note prepared on Mr Winston Churchill's Obscene Publications (Protection of Children etc) Amendment Bill.

The primary purposes of the Bill are:

- (i) to remove the exemption from prosecution under the Obscene Publications Act 1959 for material broadcast by the BBC or the IBA; and
- (ii) to provide a more stringent test of obscenity in respect of articles published in a place to which persons under 18 have access or in broadcast material.

The Bill was given a Second Reading by 161 votes to 31 on 24 January. Committee Stage began on Wednesday, 19 February and seems likely to last around 4-5 weeks.

Broadcasting Exemption

The strongest argument against lifting the broadcast exemption is that the exemption signals that the broadcasters already have special obligations which are not laid upon other forms of publishing. At present the broadcasters are responsible to Parliament, rather than to the criminal law at large, and their obligations are stricter than those in the 1959 Act. At a time when we are concerned about standards it may seem somewhat anomalous to seek to introduce a second less severe test of acceptability which will not of itself strengthen the broadcasters' obligations.

However, the present law is undoubtedly seen by many people as conferring special privileges upon the broadcasters. It is impossible to argue with the proposition that the broadcasters ought not to be allowed to show programmes that deprave and corrupt, and in the present climate it is politically difficult to defend the continuation of the exemption. The broadcasters themselves recognise this and are prepared for it. Although the Home Secretary thinks it reasonable that the arguments in favour of the exemption should be fully represented, he would not wish to block its lifting if after hearing the arguments this was the clear view of the majority of the House.

Test of obscenity

In his letter of 18 December to the Lord President, the Home Secretary explained the difficulties with the way in which the Bill sought to apply an additional test of obscenity for articles published in a place to which

Mark Addison, Esq

children had access or shown on television. Clause 2 as drafted sets out a list of activities the depiction of which would automatically render such an article obscene. The Home Secretary proposed that a better way of securing the additional protection for children which the Bill seeks would be to provide that where material is published to children, or put on sale in such a way that children had access to it at the point of sale, the test should be whether the article would tend to deprave and corrupt such children regardless of what effect, if any, it would have on adults.

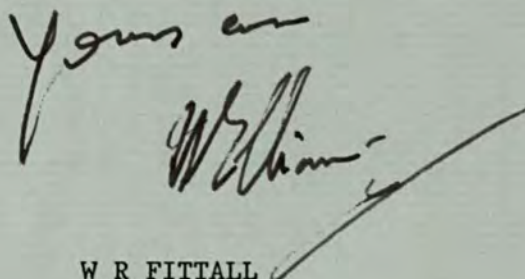
Mr Churchill has indicated in discussion with Mr Mellor that he has come to have considerable reservations about the list approach. He now accepts that the list as drafted could catch material which, if presented properly and responsibly, would be unobjectionable. He is also aware that the Director of Public Prosecutions' office and the Magistrates' Association have represented to us that the list approach would make it more difficult to secure convictions under the existing deprave and corrupt test.

Mr Mellor accordingly invited Mr Churchill to introduce amendments along the lines recommended in the letter to the Lord President. Mr Churchill has indicated that he agrees that this offers a better prospect and he has now tabled the alternative clause to replace the list approach. This would cover pictures and photographs (for example in magazines and books) but not films or videos which are already subject to classification procedures. The effect should be that the more explicit magazines will be either kept behind the counter or shrink-wrapped and will not be supplied to persons under 18.

Ministers will keep in close touch with Mr Churchill and, as agreed by H and L, will try to secure a positive outcome to the Bill. With this objective our strategy would be as follows:

- (a) we will not stand in the way of bringing broadcasting within the scope of the 1959 Act, but Mr Mellor will set out fully the considerations which ought to be taken into account before a decision is reached. (Some attention has been given to an item on the Bill on Wednesday's Nine O'Clock News. This seriously misrepresented what Mr Mellor had said by suggesting that he called for television and radio to be excluded from the Obscene Publications Act 1959 whereas in fact he simply pointed out that the existing rules which applied to the broadcasters were far stricter than the 1959 Act);
- (b) we will support the replacement of the list approach by the alternative test canvassed in the Home Secretary's letter of 18 December to the Lord President and now accepted by Mr Churchill.

I am copying this letter to Private Secretaries to the Lord President, the Chancellor of the Duchy of Lancaster, the Lord Privy Seal and the Chief Whip.

Yours as  


W R FITTALL

