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CCBG



QUEEN ANNE'S GATE LONDON SW1H 9AT

6 March 1986

CDP - to see

MGT 6/3

Dear Quentin,

THE ADMISSION OF SECOND WIVES

will request if req.

On 21 January, I wrote to you about my concern about the way in which our law allows men who have made this country their home to bring in polygamous wives. On 14 February, Geoffrey Howe expressed support for my proposal that we should look urgently at our law to see whether and how it should be amended. You have written to me separately about the Family Law Bill, which is now overdue for introduction.

David Waddington and I have now started to examine specific cases involving entry clearance applications by polygamous wives and they have reinforced my view that there is no way in which the issue of an entry clearance in such cases can be made acceptable to public - or Parliamentary - opinion. I regard it as essential that we work out now a clear plan of action rather than having to react at speed to adverse publicity.

It may help if I gave details of one case by way of example. It involves a Bangladeshi man who has lived in this country since 1959. He married his first wife the year before, and brought her and three children here in 1981. He had however married a second wife in 1974. He has applied to bring her and their children to live with him and his first family in the same house in Birmingham. The application was refused on the ground that we were not satisfied that the marriage was valid in that the man had acquired a domicile of choice in this country after some 15 years residence here. This was, however, overturned by the independent appeals adjudicator. He allowed the wife's appeal on the basis that the husband had retained his domicile of origin and that the marriage was therefore valid.

Effective action through the Immigration Rules against this sort of case is difficult. Apart from the inherent difficulty of drafting a rule which kept out second polygamous wives there is the problem of section 1(5) of the Immigration Act 1971. In virtually every case we have seen the sponsor was a Commonwealth citizen settled in this country at 1 January 1973. The admission of the wives is therefore protected by section 1(5).

As Geoffrey Howe pointed out in his letter, Leon Brittan indicated in Parliament when the Immigration Rules were changed last summer that we would introduce legislation in due course to change section 1(5). But even with this change we should remain

/vulnerable to

The Rt Hon The Lord Hailsham of St Marylebone, CH, FRS, DL

vulnerable to successful challenge under the European Convention on Human Rights if we were to deny admission to a second wife whose marriage was under our family law considered valid.

To sum up so far, I am advised that the law as it stands obliges me to agree to the entry of the second wife of the man mentioned above even though his first wife is alive, still married to him and living in Birmingham. There are other similar cases in the pipeline. Subject to the view of colleagues, I do not find this acceptable. It seems to me that we need to work out and announce as quickly as possible the change in the law necessary to rule out polygamous settlement in this country. I would propose meanwhile to postpone compliance with my legal obligation to admit these wives until we are able to say that the practice is being stopped.

Provision restricting the recognition of polygamous marriages would be the most direct way of tackling the problem. For example amending the Matrimonial Causes Act to void a polygamous marriage contracted overseas by someone settled here might be an effective way of preventing the sort of cases we face. Any such change would have to apply to existing marriages unless they had already been recognised here since the marriages we are concerned with have often been contracted some years ago.

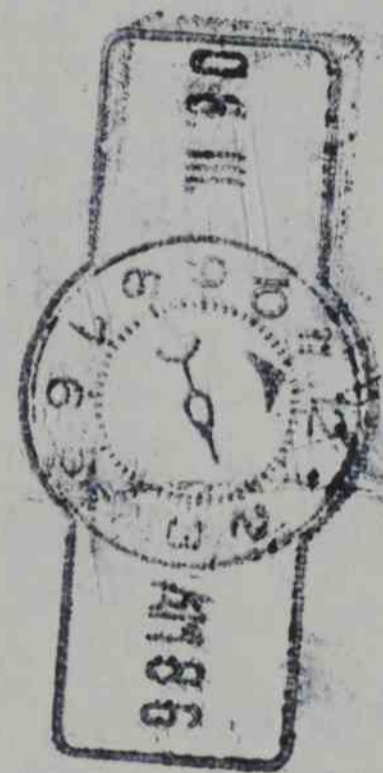
Another possible approach would, as I commented in my earlier letter, be to change the law on domicile so that people settled here more readily acquired a domicile of choice here. But I recognise that may be less attractive and that it would pre-empt the Law Commission's review.

I understand your anxiety to finalise the Family Law Bill; but I do regard it as essential that we decide how to approach the problem of polygamous marriages now. I do not think that public or Parliamentary opinion would tolerate such wives being admitted to this country without being assured that the Government has action in hand to stop the mischief.

I am sending copies of this letter to the Prime Minister, Members of H Committee, the Foreign Secretary, the Solicitor General and to Sir Robert Armstrong.

Yours,
Douglas.

My concern is reinforced by the present rumpus about a child bride.





10 DOWNING STREET

From the Private Secretary

7 March 1986

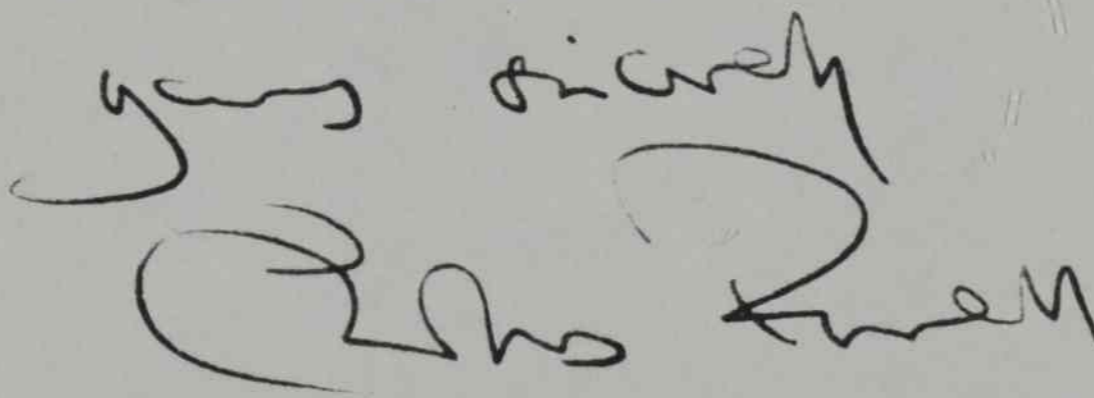
Dear Richard,

THE ADMISSION OF SECOND WIVES

The Home Secretary wrote to the Lord Chancellor on 6 March about the problem of the entry to this country of polygamous wives.

The Prime Minister strongly shares the Home Secretary's view that an early change in the law is required to rule out polygamous settlement in this country, as well as to deal with the problem of child brides.

I am sending copies of this letter to the Private Secretary to the Home Secretary, to the Private Secretaries to other members of H Committee and to the Private Secretaries to the Foreign Secretary, the Solicitor General and Sir Robert Armstrong.

Yours sincerely


Charles Powell

Richard Stoate Esq
Lord Chancellor's Office.

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cc by ✓

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FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

ceBG



HOUSE OF LORDS,
SW1A 0PW

6 March 1986

My dear Douglas:

FAMILY LAW BILL : RECOGNITION OF FOREIGN DIVORCES

will request if required

With MCA?
I wrote to you on 24th February seeking your urgent agreement to the revised policy of Part II of the Family Law Bill, which deals with the recognition of foreign divorces, annulments and legal separations. I now have to hand your reply of 6th March, and I must confess that I read it with considerable dismay.

I fully recognise your anxiety over the repercussions for immigration policy of the admission of second wives of polygamous marriages. You may well be right in saying that one way of dealing with the problem would be to void a polygamous marriage contracted overseas by someone settled here, rather than someone domiciled here as is at present the case, and my officials are looking at the question. But, as I attempted to explain in my previous letter, this has no connection with Part II of the Family Law Bill, which is concerned, not with the validity of marriages, but with the recognition of divorces.

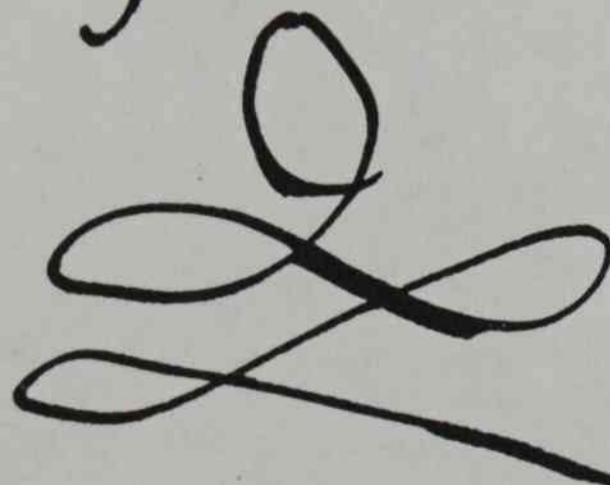
The Right Honourable
Douglas Hurd CBE, MP
Secretary of State for the Home Department

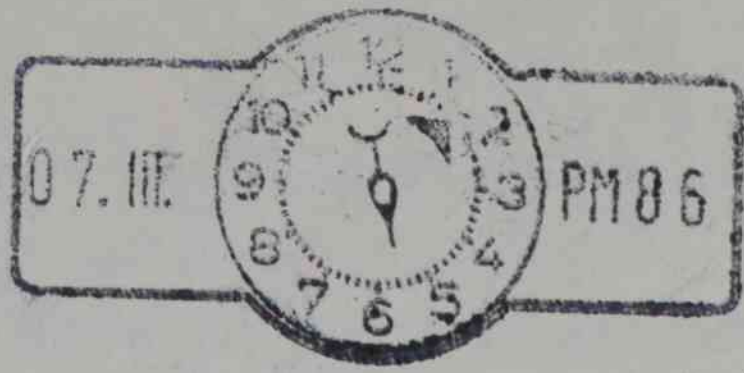
You say that you understand my anxiety to finalise the Family Law Bill, but unfortunately you do nothing to allay that anxiety. There seems to be an implication that the Bill might itself contain provisions to deal with the problem of polygamous marriages. If that is indeed your view, I must tell you that I regard this as quite impossible. First there is as yet no settled policy to implement. Secondly, such a matter would be outside the terms of the Bill, and not something for which I sought or obtained the permission of colleagues. Lastly and most importantly, it would be highly controversial, and I have permission to introduce the Family Law Bill only if it can go through the Commons on second reading committee procedure.

It was on 7th February that my officials wrote to yours setting out the revised policy for Part II to which I sought your agreement. If for some reason you feel you cannot agree to that revised policy, I shall have no alternative but to introduce the Bill without Part II. The result will be that the present more liberal law on the recognition of foreign divorces will continue to apply, and I doubt if that would accord with your wishes.

I am sending copies of this letter to the Prime Minister, members of H Committee, the Foreign Secretary, the Solicitor General and to Sir Robert Armstrong. Your letter does not appear to have been copied to the Lord Advocate, whose Bill this also is, and I am therefore sending him a copy of your letter and of my reply.

yrs:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.





The Rt Hon Douglas Hurd CBE MP
Secretary of State
Home Office
50 Queen Anne's Gate
London SW1H 9AT

cc BF
Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone Direct Line 01-212 0515
Switchboard 01-212 7676

12 March 1986

MEAN
to
me

FAMILY LAW BILL: RECOGNITION OF FOREIGN DIVORCES

Quintin Hailsham copied to me his reply of 6 March to your letter of the same date since he and I are jointly promoting this Bill.

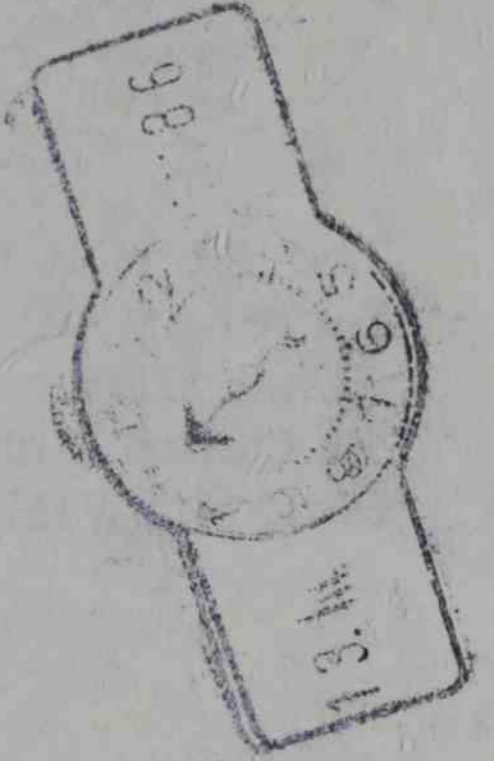
I am writing to record that I fully agree with what Quintin says in his letter of 6 March. In particular I am very concerned that the continuing discussion about the difficult matter of the repercussions for immigration policy of the admission of second wives may further delay the introduction of the Bill whose scope is different. The Bill also implements the recommendations of the two Law Commissions for dealing with problems arising in connection with child custody conflicts within the United Kingdom. This is a matter on which continuing public concern has been expressed. In replying to representations from Mr Robert Hughes MP I told him last November that the Government intended to introduce legislation as soon as possible in the current Parliamentary Session to deal with the unsatisfactory position of conflicting child custody orders made by the courts within the various law districts of the United Kingdom.

I very much hope that our continuing discussions about the vexed matter of the admission of second wives of polygamous marriages will not delay the introduction of legislation to deal with the problems and distress caused by custody orders made by a court in one part of the United Kingdom not necessarily being recognised and enforced by the courts in another part.

Copies of this letter go to the Prime Minister, Members of H Committee, the Foreign Secretary, the Solicitor General and to Sir Robert Armstrong.

CAMERON OF LOCHBROOM

IMMIGRATION Rules; Part 2.





01-405 7641 Extn

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

Prime Minister

CDP
11/3

The Rt.Hon. The Lord Hailsham of St Marylebone CH, FRS, DL.,
The Lord Chancellor
House of Lords
London SW1

10 March 1986

Dear Quintin

THE ADMISSION OF SECOND WIVES

I have seen a copy of Douglas Hurd's letters to you of 21 January and 6 March and of Geoffrey Howe's minute of 14 February.

I am very conscious of the fact that this is a highly explosive subject and that there is a need for early amendment of the law. I must, however, advise in the strongest terms against taking any action against second wives until there is a change in the law. Douglas Hurd in his letter of 6 March proposes to postpone compliance with his legal obligations to admit these wives until we are able to say that the practice is being stopped. Such unlawful action by the Government cannot be contemplated. For Counsel on behalf of the Crown to have to admit in Court that the Government had knowingly and deliberately acted unlawfully in refusing admission to a second wife would do untold damage to the Government's credibility as a Government which upholds and abides by the law.

I should only add that I agree with Douglas Hurd and Geoffrey Howe that any amendment of the Immigration Act or Rules would need to be considered very carefully in the light of our obligations under the European Convention on Human Rights.

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- page two -

I am sending copies of this letter to the Prime Minister, Members of H
Committee, the Foreign Secretary and to Sir Robert Armstrong.

Yours Ge. Michael

Immigration: Rules Pt 2.

