



CC AC 1

Prime Minister.
Colleagues are content.
Agree this approach?
OK Yes - if there
is nothing
4/4 more that
we can do
no

Prime Minister

STRASBOURG - PROOFING

You held a meeting with colleagues last summer to discuss possible ways of reducing the impact of the findings of the European Court on Human Rights in Strasbourg. In deciding that we should maintain the status quo, it was agreed that we should renew our acceptance of the right of individual petition and the compulsory jurisdiction of the Court (which has now been done) and should not incorporate the European Convention into domestic law.

The meeting also concluded, however, that further consideration should be given to improving the machinery for "Strasbourg-proofing" future legislation. Officials here have been looking at this in consultation with other interested Departments and I am now in a position to circulate proposals to colleagues.

We face the obvious difficulty that we are not dealing here with issues of fact, nor can we (as we know to our cost) make absolutely confident predictions of the way in which Strasbourg will move. Our Strasbourg obligations moreover amount to a much more open-ended commitment than (say) our Community obligations. In the case of legislation and other measures having a bearing on Strasbourg obligations, colleagues may well experience acutely the difficulty of having to balance the risks of future adverse Strasbourg findings with their own immediate Departmental policy objectives.

This suggests a less formal approach than we have adopted for EC matters and I do not consider that the situation calls for any formal committee structure whether at official or Ministerial level for dealing specifically with these matters. I suggest that individual Departments should take first responsibility for assessing the vulnerability of the proposed measures to ECHR

jurisprudence, with the option of a collective Ministerial view later if necessary. Machinery of the EQO type could get weighed down with casework, have difficulty in obtaining definitive legal advice and might generally interrupt the efficient despatch of Government business.

In my view this points to the need for central guidance from the Cabinet Office on the procedure to be adopted when proposals are being considered in Departments; and an established procedure for bringing ECHR considerations forward when collective Ministerial approval is sought for any given measure.

If you and colleagues agree, therefore, I propose that we invite Cabinet Office to prepare a circular of guidance, on the following lines:

- (i) that individual Departments, in consultation with their legal advisers, should always consider the effect of existing (and predicted) Strasbourg jurisprudence on any proposed legislative or administrative measures;
- (ii) that if Departments are in any doubt about the likely implications of the Convention in connection with any particular measure, they should seek ad hoc guidance from FCO, copying the request to the Law Officers, the Lord Advocate's Office, and any other Departments facing comparable problems. Exchanges of correspondence would also be copied to the Home Office, the Scottish Office and the Northern Ireland Office because of their general oversight of the domestic application of the Convention;
- (iii) that any memoranda submitted to a policy committee of Cabinet, or accompanying a Bill submitted to Legislation Committee, should

include an assessment of the impact, if any, of the ECHR on the action proposed (much as Departments now do for Community implications).

I think it would also be helpful if the guidance could stress the need, where this is right, to pay more regard to the possibility of friendly settlements where they seem to offer a politically less damaging outcome than determination by the Court or Commission. Departments could also be reminded of the need to consider action on existing measures where it is clear that there is a risk of an adverse finding at Strasbourg which will affect them.

I think it would be desirable if the issue of this guidance were accompanied by a statement of Ministers' concern that the need for these procedures should be fully recognised within Whitehall. One possibility might be for such a statement to issue in the form of a Private Secretary letter from No 10 and my officials would be glad to suggest a text.

I should be glad to know if you and colleagues agree that this is the right way to proceed.

Copies of this minute go to the Lord President, the Lord Chancellor, the Foreign Secretary, the Secretary of State for Education and Science, the Secretary of State for Scotland, the Secretary of State for Social Service, the Secretary of State for Employment, the Secretary of State for Northern Ireland, the Attorney General, the Lord Advocate and the Secretary to the Cabinet.

Douglas Hurd

17 March 1986





cc: PC

10 DOWNING STREET

From the Private Secretary

6 April 1986

Dear Stephen,

STRASBOURG - PROOFING

The Prime Minister has considered the Home Secretary's minute of 17 March in which he sets out a number of proposals for improving the machinery for "Strasbourg-Proofing" future legislation.

The Prime Minister agrees with the points which the Home Secretary proposes should be included in a circular of guidance to be issued by the Cabinet Office. She also agrees that it would be helpful for this to be accompanied by a statement of Ministers' concern that the need for these procedures should be fully recognised within Whitehall. I should be grateful, therefore, if you could let me have a draft for a Private Secretary letter from No. 10 to accompany the guidance.

I am copying this letter to the Private Secretaries to the Lord President, the Lord Chancellor, the Foreign Secretary, the Secretaries of State for Education and Science, Scotland, Social Services, Employment, and Northern Ireland, the Attorney General, the Lord Advocate and Sir Robert Armstrong.

Yours sincerely,

Charles Powell

Stephen Boys Smith, Esq.,
Home Office.

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