CONFIDENTIAL

Copy to on Education: Corporal Punishment file (copy already on Human Rights)

10 DOWNING STREET

*From the Private Secretary*

17 July 1985

Dear Hugh,

EUROPEAN COURT OF HUMAN RIGHTS

The Prime Minister held a meeting this afternoon to consider the Home Secretary's paper on ways of reducing the impact of the findings of the European Court in Strasbourg on our law. The Lord President, the Lord Chancellor, the Home Secretary, the Northern Ireland Secretary, the Attorney General, the Chief Whip, the Lord Advocate, the Minister of Health, the Parliamentary Secretaries at the Foreign and Commonwealth Office, the Scottish Office, the Department of Education and Science and the Department of Employment and Sir Robert Armstrong were present.

It was noted that there was growing criticism in Parliament about what was perceived as the political nature of many of the European Court's decisions. There was a risk that Parliament would increasingly be disinclined to accept legislation stemming from the decisions of the Court, as was already evident in the case of the Education (Corporal Punishment) Bill. Against this background there might well be quite wide support for withdrawing the right of individual petition under Article 25 of the European Convention on Human Rights or for failing to renew the optional provisions of Article 46 providing for the compulsory jurisdiction of the Court. But it was recognised that the Convention and particularly the right of individual petition enjoyed wide support in the country. Withdrawing the right of individual petition or failing to renew Article 46 would be seen by many as threatening the integrity of the international measures to protect human rights and weaking our international reputation.

No support was expressed for incorporation of the Convention into English law. Partial incorporation in the form proposed in the Home Secretary's minute of 10 July to the Prime Minister might well lead to a proliferation of cases in the English courts, would not avoid recourse by individual petitioners to Strasbourg, and would increase pressure on the Government to legislate promptly to implement decisions of the Courts. It was also thought undesirable to increase the number of cases in which the judiciary appeared to be delivering political judgments against the Government of the day.

In a discussion of how to proceed over the Education (Corporal Punishment) Bill, it was agreed that it would not be appropriate to make use of the Parliament Act to overbear the opposition in the House of Lords. One possibility would be reintroduce the Bill in the next session of Parliament, but this risked running into the same opposition. As an alternative, advice should be sought on whether the Court's judgment could be implemented by a circular issued by the Secretary of State for Education to local education authorities (as had happened in Scotland). However this would not be mandatory, and might be resented by the Lords as an attempt to by-pass them. Another course would be to go back to the European Court and explain that the Government had used its best endeavours to implement the judgment in the Campbell and Cosans case but had found it impossible to get the legislation through Parliament. But this would leave us in breach of our international obligations; and it was not necessarily the case that it was impossible to get legislation through Parliament.

Summing up the discussion, the Prime Minister said that withdrawal from the Convention was not a practicable option, nor was a decision against renewing our acceptance of Articles 25 and 46. Equally there was no support among colleagues for incorporation of the Convention into English law: and there were major practical obstacles in the way of the Home Secretary's proposal for partial incorporation. The conclusion was therefore that we should maintain the status quo. But efforts should be made to Strasbourg-proof future legislation. Further consideration should be given to improving the machinery for this. Recourse should also be had to settlements where these seemed to offer the least damaging outcome to cases before the Court. The Lord President and the Secretary of State for Education should consider further the options for implementing the Court's judgment in the Campbell and Cosans case, and report back in due course. No further action should be taken over the Education (Corporal Punishment) Bill in the current parliamentary session.

I am copying this letter to the Private Secretaries to the Lord President, the Lord Chancellor, the Secretaries of State for Education, Foreign and Commonwealth Affairs, Employment, Northern Ireland, Scotland, Health and Social Security, the Attorney General, the Advocate-General and Sir Robert Armstrong.

yours sincerely,

Charles Powell

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Home Office