

PRIME MINISTER

Scrutiny of new powers of entry

You will recall that, with the aim of limiting proposals for new powers of entry, there are arrangements that every case should be scrutinised by a Minister - hitherto the Solicitor General.

Before the Election there was a proposal that this responsibility should be transferred from the Solicitor General to a Home Office Minister. The Home Secretary, the Attorney General and Sir Robert Armstrong were in favour of this, but Sir Ian Percival opposed it; and you decided to leave things as they were while Sir Ian Percival was Solicitor General. But you authorised me to send a private minute to Sir Robert Armstrong saying that you would reconsider the transfer to a Home Office Minister when there was a change of Solicitor General.

The Attorney General has now proposed that the responsibility should be transferred to a Home Office Minister. Sir Robert Armstrong supports this, proposing that the procedures should be on the lines attached. The Home Secretary has also agreed - letter at Flag A - with the gloss that there is no need for every case to be automatically referred to a Minister.

✓ I suggest that you now agree to the transfer, but insist that each case should be personally authorised by a Minister. This was an essential part of the procedures to limit new powers of entry and, if the Home Office were allowed to get away with their comment, I suspect that we would soon get back to the position in which new powers of entry were regularly approved at official level instead of receiving Ministerial scrutiny in each case.

Agree?

Yes

mb

F.R.B.

21 July 1983



Scrutiny of Powers of Entry - Proposed Procedures

1. It should continue to be the duty of the Home Office to scrutinise all Bills (public, local or private) for proposals to create or re-enact powers of entry for the police or public officials in England and Wales, and in Great Britain or the United Kingdom as a whole. The Scottish Home and Health Department should have a similar duty in respect of exclusively Scottish Bills, and of United Kingdom and Great Britain Bills creating or re-enacting powers of entry exercisable in Scotland. The Northern Ireland Office should have a similar duty in respect of exclusively Northern Ireland Bills and Orders in Council, and of United Kingdom Bills creating or re-enacting powers of entry exercisable in Northern Ireland. References in the procedures below to the Home Departments should be construed accordingly.
2. In their scrutiny of Bills and proposals the Home Departments should have the duty of applying the "Mitchell" principles - broadly the need to minimise the constraints and burdens which powers of entry can impose on the owners or occupiers of premises.
3. A Department should not propose new powers of entry in legislation for which it is responsible without the specific agreement of its Ministers.
4. Any proposal for new powers of entry contained in a private Bill should also be referred to Ministers by the Department responsible for considering the Bill.
5. A Department should, after obtaining the agreement of its Ministers, consult the appropriate Home Department or Departments (ie the Scottish Home and Health Department and/or the Northern Ireland Office, as well as the Home Office, for any proposal which would have effect in Scotland and/or Northern Ireland) on any proposal, whether in a public or private Bill, to create or re-enact powers of entry, whether into business or private premises, for the police or public officials. In the Home Department or Departments concerned, a Minister should be consulted in all cases, and before any Government proposal is approved.
6. The Law Officers must also be consulted (through the Law Officers' Department or the Lord Advocate's Department as appropriate) by the Department concerned, if there is any question requiring legal advice in connection with proposals for creating or re-enacting powers of entry.
7. Departments should initiate such clearance of proposals with the Home Departments and, where appropriate, the Law Officers at as early a stage as possible.
8. Proposals for creating new powers of entry should be specifically noted when a memorandum is put to the relevant Cabinet Committee for policy clearance; they should not be included in such a memorandum unless they have been agreed with the appropriate Home Department(s). Any proposals for new powers of entry arising after policy clearance should be cleared in correspondence with the relevant Ministers (members of the Cabinet Committee which gave policy clearance and others concerned), and the correspondence should make clear that the proposals have been approved by Home Department Ministers.



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8 July 1983

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SCRUTINY OF NEW POWERS OF ENTRY

Thank you for your letter of 20 June proposing that responsibility for the scrutiny of proposed new powers of entry in primary and subordinate legislation should pass to the Home Office. I have also seen Robert Armstrong's letter of 21 June to Brian Cubbon.

I should be very ready, subject to the views of the Prime Minister, for the Home Office to take this on. As you know, we are already actively involved in this area, and I think there is much to be said for concentrating this work in the policy rather than the Legal Departments.

I propose that we should in general follow the proposed procedures attached to Sir Robert Armstrong's letter. My only reservation concerns paragraph 5 which provides for automatic reference to a Minister in the case of all Government proposals. I am not sure the guide to legislative procedure need lay down in such detail how we should conduct our scrutiny, and I am confident that we can achieve internal arrangements which ensure appropriate Ministerial oversight with no less rigorous scrutiny. I would therefore prefer to see the final sentence of paragraph 5 read "In the Home Department or Departments concerned appropriate Ministerial oversight of powers of entry will be maintained".

*C. L. Havers*

The Rt Hon Sir Michael Havers, QC, MP





20 July 93