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10 DOWNING STREET
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From the Private Secretary

4 September 1989

Dear Catherine

BBC LICENCE FEE EVASION

The Prime Minister has seen the Home Secretary's minute of 1 September on whether licence fee evasion should be decriminalised. She has commented that she thinks it is quite wrong for the licence fee to be subject to criminal sanctions. That should be a last resort, not the first.

I am copying this letter to the Private Secretaries to the members of MISC 128, to Paul Stockton (Lord Chancellor's Office) and to Trevor Woolley (Cabinet Office).

Yours sincerely

Dominic

Dominic Morris

Miss C. J. Bannister,
Home Office.

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20 I think it is quite wrong for the licence fee to be subject to criminal sanctions. That should be a last resort, not the first.

Prime Minister

Content with the Home Sec's proposal that licence fee evasion should remain a criminal offence?

and with his proposal in para 9 15 was a loophole in the current law?

BBC LICENCE FEE EVASION

The purpose of this minute is to consult colleagues about the Home Affairs Committee recommendation that licence fee evasion should be decriminalised; and action which might be taken to close a loophole in liability for television licences.

*Jm
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Criminal status of licence fee evasion

Background

2. Evasion of the licence fee is a criminal offence under the Wireless Telegraphy Act 1949, punishable by a fine of up to £400. About 160,000 people are convicted each year of unlicensed use of television. The average fine is about £56, plus costs of £11. The magistrates' courts' costs amount to about £2m, and the fine revenue is about £9m.

3. In their Report last year on the future of broadcasting the Home Affairs Select Committee recommended, among other things, that evasion of the licence fee should be treated as a civil rather than a criminal matter, and thus be pursued through the county courts in the same way as any other civil debt. This was based on the fact that non-payment of public utility charges is pursuable only as a civil debt. The Committee considered that the process of being taken to court and being

/publicly branded

publicly branded as a bad debtor would be sufficient to ensure that most people would pay up, that the move to a civil debt procedure would relieve the magistrates' courts of a large burden and that the change would be right at a time when the BBC are preparing to take over responsibility for administering the licence fee system.

Assessment

4. We have consulted a number of bodies about the Committee's proposals including the Lord Chancellor's Department, the gas, water and electricity industries, the Post Office (TV licensing organisation) and the BBC. There are no objections in principle to the Committee's proposal but feasibility is a different matter. As to the civil courts, I understand that a planned computer-based facility for bulk issuing of summonses could cope at an estimated additional cost of some £100-£150K a year, which could be contained within existing PES provision. Savings in the magistrates' and equivalent courts would be a notional £2m a year (they would be too dispersed to be realisable, though waiting lists could benefit in larger courts) while fine income would drop by £9m.

5. But decriminalisation would give rise to serious practical difficulties in combatting licence fee evasion. In particular:

- (a) unlike the BBC, the public utilities all have the power to cut off the supply to their customers; and they all regard this as crucial to their ability to enforce charges. Disconnection not only involves the inconvenience (or worse) of losing supply, but also the payment of a re-connection charge. The threat of disconnection is therefore an extremely powerful

/incentive

incentive to customers to pay up. For example, the Electricity Council estimate that the threat of disconnection results in a 97% debt settlement rate, and only about 0.5% of their customers are actually disconnected. The water industry disconnects only about 2% of its customers in any period. Data are not readily available for gas and telephone, but are believed to be similar. These figures compare very favourably with the estimated television licence fee evasion rate of 7.5%.

- (b) In the case of television, the Post Office, before they can take action, must first prove that evasion has occurred. This generally requires entry to the premises or doorstep admission of guilt - normally forthcoming because people know that in the last resort Enquiry Officers can obtain a search warrant. But it would be hard to maintain a power of entry simply to establish a civil debt.
- (c) The utilities find pursuing civil debts through the county courts an uncertain, time-consuming and expensive procedure. As a general rule, they write off debts below £25 because that is the point below which they cannot obtain costs even if they win.
- (d) The sum recoverable would be limited to the period for which evasion could be proved. This would generally be under the £25 write off threshold operated by the utilities, and thus in practice the BBC would have to forego the revenue. In theory the civil equivalent of a fixed penalty might be established; but research on this point in 1986 showed that to be effective as a

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deterrent it would have to be set as high as £170. Such a sum would be disproportionate to the seriousness of the offence, and it would mark a major departure from the general concept of civil debt.

- (e) Even if judgement for a civil debt is secured in Court, there is still the problem of actually enforcing it and getting the money. Only about 30-50% of civil debts are actually recovered after institution of proceedings.
- (f) The Post Office's own research shows the fact that licence fee evasion is classified as a criminal offence is generally in itself a powerful deterrent.
- (g) Even amongst the normally law-abiding who are prepared to pay, there would be less incentive to do so on time. Many could decline to pay up until an Enquiry Officer called or until proceedings were issued; and this would dramatically add to the workload of the Post Office, impair its effectiveness and have a severe effect on the BBC's cash flow.

Summary

6. Decriminalisation without the ability to cut off the supply would greatly increase the difficulties of combatting evasion and late payment. That would not simply undermine the level of service provided by the BBC; it would create very strong pressure to recoup the losses from honest licence payers by raising the fee. That would create political problems for government and a vicious financial spiral for the BBC.

7. This in no way detracts from my view that the licence fee as presently set up and collected lacks any real intellectual or moral justification. But while it exists, it needs to be effective. There is not much point in allowing it to be so often and easily evaded that it fails to provide the BBC with necessary revenue. That would give us the worst of both worlds.

8. My conclusion is therefore that while the BBC continues to rely so heavily on the licence fee, evasion must remain a criminal offence. Disconnection for non-payment is of course likely to be an effective sanction for subscription television; and we should review enforcement of the licence fee again in the run-up to the Charter renewal in 1996.

"Availability for use"

9. Whether licence evasion is a criminal or civil offence, it is desirable to ensure that there are no major loopholes in the definition of the offence. I therefore propose to incorporate in the Broadcasting Bill an amendment to s1(1) of the Wireless Telegraphy Act 1949 so as to make it an offence to install or maintain wireless telegraphy apparatus without a licence.

Background

10. Section 1(1) of the Wireless Telegraphy Act 1949 makes it an offence to install or use wireless telegraphy apparatus without a licence. The Department of Trade and Industry rely on this section to act against pirate radio stations, and the Home Office rely on it to act against licence fee evaders.

11. Until 1987, with the backing of a High Court judgment section 1(1) was interpreted by both Departments to mean that an offence was committed if wireless telegraphy apparatus was available for use without a licence, without the need to prove that it had actually been in use at a specified time. The 1987 House of Lords judgment in the Rudd case involving a pirate radio station, overturned this. It was to the effect that for an offence to be established it had to be proved that apparatus had actually been used for wireless telegraphy purposes. It has already been agreed that pirate broadcasters must be stopped by broadening the offence to include availability for use in the case of transmitters; but we have yet to decide what to do about television receivers.

Analysis

12. The licence fee is payable if a set is installed or used to receive authorised broadcasting stations (the BBC, ITV, Channel 4 and in due course BSB). Unless the person is caught redhanded, proving actual use is difficult. A person could argue that he did not need a television licence because he used his TV set only in connection with a video recorder to watch pre-recorded videos; or in connection with a home computer; or to watch programmes broadcast by, for example, Sky TV via Astra, which is not an authorised broadcasting station. Even though sole use of sets for such purposes must be unusual, the defence would under present law be difficult to disprove. It has not yet been used in court, but it is beginning to influence the evidential standards applied by licence enquiry officers in deciding whether to prosecute; and clearly word of the anomaly could easily spread.

13. I have considered whether to remove the present 6 month time limit on proceedings for the offence of unlicensed installation, but it could be extremely difficult to track down the person who installed a set. I think the only way we

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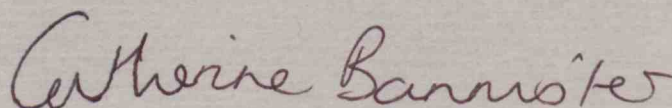
could proceed is to amend section 1(1) of the 1949 Act so as to make it an offence to maintain as well as install or use, receiving apparatus without a licence.

14. I should say that it might be argued that it is unreasonable to expect payment of the licence fee by someone who genuinely did not use his TV to receive authorised broadcasts. But if a person genuinely wished to use his TV set only for pre-recorded videos, or with a computer or to receive Astra broadcasts, he could legitimately avoid paying the licence fee by adapting his TV set in such a way that it was not capable of receiving broadcasts from authorised broadcasting stations. I think that is an adequate and reasonable answer, given the potential for exploitation if we do not make the change alongside that proposed for transmitters.

Conclusion

15. On balance, therefore, I conclude that the weight of argument lies in favour of applying the proposed amendment to receiving as well as to transmitting equipment. This would appear in a schedule to the Bill.

16. A copy of this minute goes to the members of MISC 128 and to the Lord Chancellor as well as Sir Robin Butler; and I would be grateful if colleagues could let me know if they are content by 8 September.



MISS C J BANNISTER
(Approved by the Home Secretary
and signed in his absence.)

1 September 1989

