DEPARTMENT OF EDUCATION AND SCIENCE
ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH
TELEPHONE 01-928 9222
FROM THE SECRETARY OF STATE

18/7

18 JULY 1983

Dear Willie.

CORPORAL PUNISHMENT IN SCHOOLS

Thank you for your letter of 5 July about the draft consultative document on corporal punishment.

The issue raised by the Lord Chancellor - that the legislation should be drafted so as to keep to a minimum the burden on the Courts and the legal aid fund - is important and to my mind poses no problem of principle.

As to your reference to the H Committee's meeting at which there was some discussion about whether or not we should commit ourselves to legislation, I believe our common objective was to leave options open for as long as possible. In fact, as I explained in a subsequent letter, I was able to escape altogether writing to Strasbourg as had been envisaged, and in large measure this achieved our objective. But in my view we cannot any longer avoid a commitment to legislate.

In England, at least, legislation is inevitable. I cannot see any real possibility of agreement to a voluntary system of exemptions, and even if I did we would still need to provide a legal remedy for parents to cover those instances where, for one reason or another, the system broke down. I note that George Younger has in mind legislation at some stage to cap his voluntary scheme, and he is following the line of abolition. The retention of corporal punishment elsewhere in the UK makes any voluntary scheme that much more difficult. As the consultative document makes plain, there is a complexity about even a legislated solution; working outside a legal framework would lack credibility both here and in Strasbourg.

/What I

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
68 Whitehall
London SW1A 2AT

What I have in mind all the time is the need to demonstrate to Strasbourg that we are serious in our intention to act following the judgment in the Campbell and Cosans case, which issued seventeen months ago. Unless we can soon convince Strasbourg of our good intentions, we shall increase the risks surrounding the other English cases of corporal punishment. My conclusion, therefore, is that in the consultative document we must commit ourselves to legislation.

Moving on to the Assisted Places Scheme, this has now, of course, been covered by the Law Officers' revised Opinion. That revision seems to me to say that if a child is prevented from taking up an Assisted Place because of a parental philosophical conviction against corporal punishment, then there may be a breach of the European Convention on Human Rights if the State cannot provide a suitable alternative. I am sure that our position would quickly be tested by a case brought before the Commission and subsequently the Court; and the risk of an adverse finding would be high, given the difficulty of demonstrating that a place in a maintained school was a sufficient alternative to an Assisted Place, and given the hostile atmosphere in which the case would be heard. We are the more vulnerable for having, rightly, presented the scheme as offering opportunities not available in the maintained sector.

If an adverse finding could be confined to the narrow issue of the Assisted Places Scheme, the risk might be worth taking. My fear, however, is that the Court might use the opportunity to pronounce on the wider matter of corporal punishment itself, and so bring pressure on us to abolish it altogether. I hope that our exemption arrangements generally will be sufficiently robust to reduce to a minimum the corporal punishment cases coming before the Commission (and the Court). For these reasons I believe that we cannot simply ignore the Assisted Places problem.

I accept that the extension of the exemption arrangements to Assisted Places carries with it a different kind of risk - that some independent schools may wish to withdraw from the Scheme rather than have exemption forced upon them. It is difficult to weigh the risk and I suggest that, at the same time as the consultative document issues, the Independent Schools Joint Council should be separately consulted on this issue.

Paragraph 10 of the main consultative document might then read as follows:

> "Independent schools will be largely unaffected by the proposed legislation: parents who send their children to schools outside the maintained system generally do so by exercising choice. However, legislation will impose exemption obligations in relation to (a) local authority placements in independent schools (including places in independent schools for children with special educational needs); (b) places in non-maintained special schools; and (c) places in the Music and Ballet Scheme. In relation to the Assisted Places Scheme, the Government will consult separately the interests directly concerned."

/The reference

The reference to the Assisted Places Scheme in the final paragraph of the document would be deleted.

As the revision implies, the Law Officers' advice on the Music and Ballet Scheme has led me to believe that, because the schools involved offer specific opportunities which are not available within the maintained system, they must be brought within the exemption arrangements. I have taken it that Michael Havers' letter does not affect LEA placements, and that they too must be within the arrangements.

Copies of this letter go to the recipients of yours. I should be grateful for comments as soon as possible. It is now important to publish the consultative document before the Recess.

Yours,

Keith.

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Euro Convention
on Human Rights

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

26 July 1983

The Rt Hon Sir Keith Joseph Bt MP
Secretary of State for Education and Science

Dear Keith

27/7

CORPORAL PUNISHMENT IN SCHOOLS

Thank you for your letter of 18 July about the draft consultative document on corporal punishment. I am grateful to you for explaining why you think a commitment to legislate can no longer be avoided, and I feel sure the Committee understands your position.

I am less happy about the assisted places scheme. As you say, it is difficult to weigh the risk that some independent schools may wish to withdraw from the scheme rather than have exemption forced upon them. But I see from George Younger's letter to you of 21 July that he thinks the risk is considerable and that the effect on the scheme could be disastrous. I have now seen your further letter of 25 July to George Younger. I understand that he now accepts that you should include the wording of paragraph 10 of the consultative document which you proposed in your letter of 18 July. You may now take it that you now have H Committee's approval to publish the consultative document.

I am sending copies of this letter to the Prime Minister, to members of H Committee, to the Foreign Secretary, the Attorney General, the Lord Advocate and to Sir Robert Armstrong.

Yours

EURO POL: Human Rights: Non [redacted]

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SECRETARY OF STATE
FOR
NORTHERN IRELAND

NORTHERN IRELAND OFFICE
GREAT GEORGE STREET,
LONDON SW1P 3AJ

The Rt Hon Sir Keith Joseph Bt MP
Secretary of State for Education and
Science
Elizabeth House
York Road
LONDON SE1 7PH

28 July 1983

Dear Keith

CORPORAL PUNISHMENT IN SCHOOLS

Thank you for copying to me your letter of 18 July to Willie Whitelaw.

You say that you cannot see any real possibility of avoiding legislation for England and Wales. There seems to me to be little prospect of getting agreement to implement a non-statutory system of exemptions in Northern Ireland either, particularly in view of the proportionately large number of voluntary schools here. I therefore consider that legislation will be necessary for Northern Ireland and I support your view that the consultative paper should refer to the proposal to legislate.

I am copying this letter to recipients of yours.

Yours

NH

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DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE, YORK ROAD, LONDON SE1 7PH

TELEPHONE 01-928 9222

FROM THE SECRETARY OF STATE

2617

25 July 1983

Dear George,

Thank you for your letter of 21 July about the consultative document on corporal punishment.

We discussed briefly today the question of assisted places. I have, as agreed, looked at this again, but I am still of the view that the wording of paragraph 10 of the consultative document should be as proposed in my letter of 18 July. I am grateful to you for agreeing to my going ahead with publication on this basis.

Copies of this go to recipients of yours.

Yours,

Ken

Rt Hon George Younger TD MP
Secretary of State for Scotland
Scottish Office
Dover House
Whitehall SW1A 2AU

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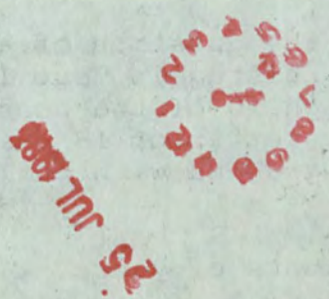

SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

CONFIDENTIAL

The Rt Hon Sir Keith Joseph Bt MP
Secretary of State for Education and Science
Elizabeth House
York Road
LONDON
SE1 7PH

21/7

21 July 1983

Dear Keith,

Thank you for copying to me your letter of 18 July to the Lord President of the Council about your draft consultative document on corporal punishment.

I do agree with your interpretation of the Law Officers' revised Opinion and that there is a risk that a parent wishing to take advantage of the assisted places scheme and finding that schools in the scheme will not respect his philosophical conviction against corporal punishment, could successfully argue to the European Court of Human Rights that the United Kingdom was thereby failing to comply with the European Convention. I believe, however, that that risk is to be preferred to the alternative of taking action to ensure that, in relation to assisted places, parents must have the option to have their children exempted from corporal punishment.

I do not think that the risk of schools withdrawing from the assisted places scheme rather than accept conditions concerning their disciplinary methods should be underestimated. Moreoever it appears to me that the alternative wording you propose for paragraph 10 of your consultative document would be interpreted as a commitment on the part of the Government to take action in relation to corporal punishment of pupils in assisted places. If, following from the consultations, there is then a significant withdrawal of schools from the scheme it would, in my view, be very difficult for the Government to retract and the effect on the assisted places scheme could be disastrous.

I would very much prefer to take no action in relation to the assisted places scheme but clearly we must be in concert since, unlike the position in the public sector, it would be impossible to argue that different considerations allowed

for different solutions in Scotland and in England and Wales. If you can accept my position then no mention of the assisted places scheme need be made in the consultative document. If, however, you feel unable at this stage to go along with that I suggest you should say merely that the position with regard to the assisted places scheme is still under consideration. We should then discuss the matter again in 'H' Committee.

I am copying this letter to the recipients of yours.

Yours ever,

George.

EURO POL: Human Rights
NN. 80

21 JUL 1983