



Ministry of
JUSTICE

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Minute

To: Secretary of State

Date: 1 April 2008

Cc: Sir Gus O'Donnell, Cabinet Office
Jeremy Heywood, No10
Howell James, Cabinet Office
Nikhil Rathi, No10
Rowena Collins-Rice
Belinda Crowe

From: Permanent Secretary, Ministry of Justice

Subject: Clause 76 of the Criminal Justice and Immigration Bill

1. My group (Howell James, Rowena Collins-Rice, Belinda Crowe, Charles Goldie and I) met with Rebekah Wade, Paul Dacre, Murdoch MacLennan and Guy Black today to discuss clause 76 (previously clause 129). This was our third and probably final meeting with representatives of the press, the previous meeting having been on the 25 March (without Rebekah Wade).

Parliamentary arithmetic

2. It has become apparent to all parties that the risk of the Government being defeated on a move to withdraw the clause entirely has decreased considerably. The Information Commissioner believes that he still has significant support in the House of Lords but the balance of probability is strongly in favour of the Government winning a vote on this.

Information Commissioner's activity

3. Richard Thomas issued a press release last night and achieved front page coverage in the Guardian today. He was also interviewed on the Today Programme at 0650. His public position has not softened though privately he is open to compromise.
4. The press representatives have conceded, whatever the outcome, that they will have to mount a public education/information campaign and amend their industry "code of

RESTRICTED - POLICY

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RESTRICTED – POLICY

conduct”. Richard Thomas does not believe that this goes far enough: he will demand a custodial sentence in statute law to act as a deterrent and has indicated that he would not settle for anything less.

Options

5. We have put four options to the press and have also tested these with the Information Commissioner:
 - a. withdraw the clause entirely, mitigated by a concerted campaign by the press to show how they intend to clamp down on illegal activity within their industry. This remains the preferred option of the press, but would be the worst option from the Information Commissioner’s perspective;
 - b. leave the clause in, but amend the Bill to contain the public interest defence in relation to Section 55 of the DPA (as set out in the previous letter). The press do not believe this goes far enough, as it still leaves a custodial sentence on the face of the Bill. Richard Thomas would welcome this option;
 - c. leave the clause in, add the s55 public interest defence, but delay commencement. I believe the press would accept this if pressed. Richard Thomas would not publicly criticise this option. The risks here are borne by Government, both presentationally and in terms of vulnerability to judicial review;
 - d. remove the clause and replace it with a new clause which gives the Secretary of State the power to increase the penalty for breach of s55 DPA by affirmative resolution of both houses. The Bill would also be amended to include the s55 public interest defence. The press would favour this option over c. Richard Thomas has signalled that his opposition to this option but may be persuadable. And even if he is not, it would be more difficult for him to mount his argument given that a custodial sentence would in due course be in statute. Moreover, I believe this option would be more defensible by Government, both presentationally and legally, than c.

Recommendation

6. Option d. represents the best chance of finding common ground between the press and the Information Commissioner. It is also more legally robust than option c.

RESTRICTED – POLICY

7. I have written to Dacre, Wade, MacLennan Black and Satchwell this evening (a copy of one of the letters is attached) with the draft clause covering option d. If the press agree to option d., and you too are content, I recommend that you speak to the Prime Minister. If he too is content, then MoJ would seek L clearance to table this amendment on Thursday.

8. I will see Richard Thomas tomorrow to discuss option d. If you agree with my advice above, I also suggest that the Prime Minister should speak to Richard shortly after the amendment is tabled.

SUMA CHAKRABARTI