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Secretary of the Cabinet and Permanent Secretary to the Management and Personnel Office

Sir Robert Armstrong GCB CVO

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3 August 1983

Dear John

Scrutiny of Powers of Entry

The Prime Minister has approved new detailed procedures for Ministerial scrutiny of proposals to create or re-enact powers of entry in legislation. The arrangements are described in the attached annex which is also being circulated to Parliamentary Clerks for inclusion in the Guide to Legislative Procedures for the use of staff working on Bills.

Similar procedures for scrutiny by the home Departments apply to proposals to create or re-enact powers of entry in subordinate legislation.

I am copying this letter to the Private Secretaries to Ministers in charge of Departments.

(R P Hatfield)
Private Secretary

J O Kerr Esq

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Govt. Vlach.

SCRUTINY OF POWERS OF ENTRY

1. It is 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 has 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 has 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 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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With the compliments of
The Private Secretary to the
Secretary of the Cabinet

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