

FROM THE PRIVATE SECRETARY



HOUSE OF LORDS,
LONDON SW1A 0PW

4 December 1986

Nigel Wicks Esq
Principal Private Secretary to
the Right Honourable The
Prime Minister
10 Downing Street
LONDON
SW1

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5/12
Dear Nigel,

Consultation with the Council on Tribunals

You wrote to me on 14 January 1986 about decisions which had been taken by the Prime Minister concerning departmental responsibility for tribunals.

The Prime Minister's decisions had no bearing on the long-standing arrangements governing the relationship between Departments and the Council on Tribunals, whose statutory and other advisory functions were not affected by the Prime Minister's decisions.

In order to clarify the position, the Council have asked us to re-circulate the Code for Consultation with the Council which appeared as an Appendix to the Council's Annual Report for 1981-82. The Code was agreed by the Lord Chancellor and the Lord Advocate, following consultation with interested Departments, and the Lord Chancellor wrote to the Lord Privy Seal on 3 August 1982 enclosing a copy of the Code.

I am therefore coping this letter to those on the attached list (which reflects the distribution of the Lord Chancellor's letter of 3 August 1982) so that they can again draw the Code to the attention of those in their respective Departments concerned directly with Tribunals, Public Inquiries and other matters in which the Council may have an interest. For convenience, I enclose for this purpose a copy of the Lord Chancellor's letter of 3 August 1982 and of the Code itself.

/I understand

I understand that, following a recent meeting between the Lord Advocate and the Scottish Committee of the Council on Tribunals, officials in the Scottish Courts Administration arranged for the Code to be re-circulated to the Scottish Departments of the Secretary of State and within the Scottish Courts Administration itself. The SCA regard the circulation of the Code to Scottish Offices within UK Departments to be the responsibility of those Departments.

Yours ever,

Richard

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S W Boys Smith Esq	Principal Private Secretary to the Home Secretary
A C S Allan Esq	Principal Private Secretary to the Chancellor of the Exchequer
A C Galsworthy CMG	Principal Private Secretary to the Secretary of State for Foreign and Commonwealth Affairs
R L Smith Esq	Principal Private Secretary to the Secretary of State for Education and Science
D J Watkins Esq	Private Secretary to the Secretary of State for Northern Ireland
J Howe Esq OBE	Private Secretary to the Secretary of State for Defence
C I Llewelyn Esq	Private Secretary to the Minister of Agriculture, Fisheries and Food
R N Young Esq	Private Secretary to the Secretary of State for the Environment
R C Williams Esq	Private Secretary to the Secretary of State for Wales
T E H Walker Esq	Principal Private Secretary to the Secretary of State for Trade and Industry
R A Allan Esq	Private Secretary to the Secretary of State for Transport
A Lawrence Esq	Principal Private Secretary to the Secretary of State for Social Services
G S Dart Esq	Private Secretary to the Secretary of State for Energy
J Turner Esq	Principal Private Secretary to the Secretary of State for Employment
T Woolley Esq	Private Secretary to the Cabinet Secretary
M Saunders Esq	Legal Secretary to the Attorney General (for information)
A G Maxwell Esq	Private Secretary to the Lord Advocate (for information)



HOUSE OF LORDS,
SW1A 0PW

3 August, 1982

Consultation with the Council on Tribunals

The Council on Tribunals is an independent statutory body whose main function is to supervise the procedures of administrative tribunals and statutory inquiries and you may recall that in 1980 the Council submitted a Special Report on its own Functions (Cmd.7805) to the Lord Advocate and myself.

Consultation by Government Departments with the Council on proposed primary and subordinate legislation was one of the topics discussed in the Functions Report and the Report recommended that a Code be introduced to regulate such consultation. The Government's response to this proposal was given in a Written Answer to a Parliamentary Question from Lord Tweedsmuir, as follows:-

"The Government also accept that it may often be helpful and appropriate for departments to consult the Council about draft primary legislation affecting matters within their field. Although there is no need for a formal code governing consultation between the Council and departments, the possibility of introducing informal guidelines should be examined."

(Hansard, House of Lords, 27th April 1981, vol.419, cols.1118-9).

The Right Honourable
The Baroness Young,
The Lord Privy Seal,
Management and Personnel Office,
Whitehall,
London, SW1.

/I....

I enclose a copy of the Code for consultation which the Council has now prepared and which has been agreed by Departments at official level. I am happy to commend it to you. It provides a useful reminder of the circumstances in which consultation with the Council is, if not mandatory, at least desirable. You will see that it draws attention (at the instance of the MPO) to the desirability of consulting the Council in relation to proposed legislation which, though not mentioning appeal procedures, should perhaps do so because the rights of the citizen are affected and a system for redress may be needed. The Code then sets out the practical aspects of consultation in a way which will certainly be helpful to officials planning primary and subordinate legislation.

Departments whose responsibilities are such that they are accustomed to seek the Council's advice fairly often will readily appreciate the usefulness of the Code. I am conscious that, in other departments, occasions for consulting the Council may arise only rarely but it is perhaps all the more important that the need for consultation, and how to set about it, should be generally understood. I should be obliged if you and all our colleagues to whom I am sending copies of this letter, would have the Code brought to the attention of those in departments whose responsibilities, whether administrative or legal, mean that they are concerned with matters in which the Council may have an interest.

I am sending copies of this letter and the Code to all Ministers in charge of departments other than the Secretary of State for Scotland, to whom the Lord Advocate will be writing separately. Copies also go to the Attorney General and the Lord Advocate.



Ministers to whom copies of the Lord Chancellor's letter of
3rd August 1982 and the Council on Tribunals' Code for Consultation
have been sent

The Prime Minister (First Lord of the Treasury and Minister for
the Civil Service)

Home Secretary

Chancellor of the Exchequer

Secretary of State, Foreign and Commonwealth Affairs

Secretary of State for Education and Science

Secretary of State for Northern Ireland

Secretary of State for Defence

Ministry of Agriculture, Fisheries and Food

Secretary of State for the Environment

Secretary of State for Wales

Secretary of State for Industry

Secretary of State for Transport

Secretary of State for Social Services

Secretary of State for Energy

Secretary of State for Employment

Secretary of State for Trade

Attorney General

Lord Advocate

Head of the Home Civil Service

Lord Chancellor's Department
House of Lords
Westminster
London SW1

4th August 1982

CODE FOR CONSULTATION WITH THE COUNCIL

Introduction

1. This Code has been prepared by the Council on Tribunals in order to put before Government Departments the considerations which the Council hope Departments will bear in mind when seeking the Council's views on proposals for new primary and subordinate legislation.

Matters for consultation

2. Under section 10 of the Tribunals and Inquiries Act 1971 (as amended) no power of a Minister, the Lord President of the Court of Session, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise to make, approve, confirm or concur in procedural rules for certain tribunals is exercisable except after consultation with the Council; such rules usually state that such consultation has taken place. The tribunals concerned are referred to in this Code as "scheduled tribunals" (see paragraph 8 below for an explanation). Similarly, the Lord Chancellor and the Lord Advocate are under a statutory obligation to consult the Council with regard to procedural rules for statutory inquiries.

3. Consultation on proposals for primary legislation affecting scheduled tribunals or statutory inquiries, or on other rules for statutory inquiries, is not mandatory, but usually takes place and is welcomed by the Council. Consultation is also desirable about any proposals for legislation affecting the rights of the citizen, where the need for an appeals procedure may need consideration.

Time allowed for consultation

4. The Council expect that Departments consulting them will always allow them as much time as possible to prepare and submit their comments. This is particularly important when consultation is mandatory and the instrument will mention that such consultation has taken place. The Council suggest that the following should be regarded as the *optimum* times for consultation:

- (a) where proposals are of a routine kind and do not raise major questions of principle: 2 months;
- (b) where proposals involve major issues of principle: 4 months.

5. Where, for unavoidable reasons, consultation has to be completed in a shorter time, the *minimum* periods which will enable the Council to give proper consideration to proposals may be taken to be 4 weeks and 6 weeks respectively. If, in cases of emergency, these minima cannot be adhered to

and an explanation is made to the Council, the Council will certainly use their best endeavours to complete the consultation process in such shorter time as may be necessary.

6. The Council are very conscious of the constraints imposed on Departments by, for example, the Parliamentary time-table. They feel however that, if difficulty is foreseen about meeting these minima, consultation need not be delayed until a full draft of the new legislation has been produced but in suitable cases may be initiated at an earlier stage, perhaps with regard to specific provisions. Indeed, particularly with regard to non-mandatory consultations, it is thought that the best time for consultation is as soon as proposals have taken reasonably firm shape but before Ministers are committed; the Council may be able to suggest means of solving an adjudication problem which may not have occurred to the Department, e.g. by amending the powers of an existing tribunal to enable it to undertake the work.

7. The Council meet monthly and Departments will understand that if a considered decision by the Council is required on any important matter of principle 6 weeks must be regarded as the minimum period for consultation. Where, however, proposals are of a routine nature the views of members of the Council, or of a committee of the Council, may be sought by post; for such consultation 4 weeks must be regarded as the minimum. In cases of real emergency, the Council do not preclude other means of consultation (e.g. by convening a special Council meeting) but they would take into account the cost involved.

What are the "scheduled tribunals"?

8. The tribunals which come within the purview of the Council (referred to in this paper as "scheduled tribunals") are (i) those which are listed in Schedule 1 to the Tribunals and Inquiries Act 1971 (as amended) and (ii) those tribunals which have been named in orders made under section 15 of that Act, directing that Schedule 1 to the Act should have effect as if the Schedule applied to them. The Council will be able to give a view in any case of doubt.

Process of consultation

9. Departments can help the Council to deal more expeditiously with draft rules by supplying 20 copies of them and 20 copies of an explanatory statement. Where proposals for head legislation are concerned, a letter (with, if available, material such as draft clauses or instructions to Parliamentary Counsel or to the Draftsman) will usually suffice.

10. The Council's comments will be submitted in writing. This may be supplemented, if necessary, by further correspondence or in oral discussion with members of the Council or of their staff.

Reporting the results of consultation

11. It is usual for the outcome of consultations between Departments and the Council to be reported in the Council's Annual Report, but in every case

the accuracy of such reports is cleared with the Departments concerned before publication. Where consultation has taken place on a confidential basis, that confidence is of course respected.

12. Where the Council have expressed views on an important question of principle, and if it is intended to make public the fact that the Council have been consulted (especially by a Minister to Parliament), the Council trust that regard will be had to their view that the general tenor of their advice should be stated at that time.

Summary

13. It will be seen from the above that the Council attach great importance to the following points:—

- (a) the allowance of adequate time to formulate advice in each case (paragraphs 4 to 7);
- (b) the provision of information and background necessary for full consideration of the issues (paragraph 9);
- (c) the discussion of points of difference in appropriate cases (paragraph 10); and
- (d) the disclosure of the Council's views on important questions of principle (paragraph 12).