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MR Purnell (No.

SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT

RESTRICTED - POLICY

C97/07560

PRIME MINISTER

PRESS REGULATION FOLLOWING THE DEATH OF DIANA, PRINCESS OF WALES

Following the death of Diana, Princess of Wales at the weekend, intensive public debate has continued on the question of possible new controls over the press. I am clear that the Government should refrain from substantive comment on this issue at present. In due course, however, we shall be called on to make a clear statement of our position, and I shall put proposals to colleagues accordingly. In the meantime, you may like to have an indication of my immediate handling plans.

Issues of press regulation are complex and have a long history. As explained in the annexed aide-memoire, a series of proposals has been made over the years to strike a better balance between the freedom of the press and the rights of individuals, but it is clear that there are no easy answers. I have serious doubts as to whether privacy legislation is desirable or practicable. What happened in Paris seems anyway rather to point to reconsideration of the law on harassment perhaps associated with action by editors and proprietors, rather than privacy laws; but it is too early to reach firm conclusions at this stage.

As the first step, it is for newspaper editors and proprietors now urgently to indicate what action they propose to take in the light of the weekend's events, both to tackle the problems caused by international paparazzi photographers and to respond to wider public concern about media intrusion. Accordingly, John Wakeham is now engaged in an urgent review with editors across the newspaper industry and he hopes to make a public statement around the end of the month. I will meet him next week to assess the emerging conclusions of this review. This will help establish a benchmark against which to consider whether further Government action is needed. In my discussions with John Wakeham, I would not propose to be drawn on any possible Government action; instead, I would indicate that we will be considering options in the light of all the circumstances, including our commitment to incorporate the European Convention on Human Rights.

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In the light of my discussions with John Wakeham, I shall consult colleagues further on possible proposals for action. For the time being, I suggest that we should continue as now to avoid being drawn as to any possible move away from current self-regulatory arrangements, but that we should indicate that we shall consider the issues further in the light of Lord Wakeham's review and in the wider context of ECHR incorporation.

> I am copying this minute to Cabinet colleagues and to Robin Butler.

C R S

2 September 1997

ANNEX

Press Regulation and Self-regulation

In the 1980s, the behaviour of sections of the press, particularly unjustified infringements of privacy, led to repeated calls for legislative intervention, either in the form of a privacy tort or criminal intrusion offences, or statutory intervention in the form of a tribunal or ombudsman. The proper balancing of the freedom of the press and rights of the individual, especially privacy, has proved an intractable issue.

2. In 1990, the Government-appointed Privacy Committee, chaired by Sir David Calcutt recommended the replacement of the old Press Council by a voluntary Press Complaints Commission as a last chance for self-regulation and, if the Commission proved ineffective, its replacement by a statutory system of regulation. It also recommended the introduction of intrusion offences. The then Government accepted these recommendations in principle, and the newspaper industry duly set up the Press Complaints Commission.

3. On 14 January 1993 Sir David Calcutt , who had been invited to review the effectiveness of self-regulation concluded that the industry had not made self-regulation effective, and would not in fact do so. He therefore recommended a statutory tribunal and consideration of a privacy tort, and again recommended intrusion offences. At the same time, the National Heritage Select Committee recommended a statutory ombudsman, and a privacy bill with criminal and civil elements.

4. In its response, *Privacy and Media Intrusion,* published in July 1995, the previous administration rejected statutory regulation on the grounds that it was a disproportionate response to such press abuses as had occurred, intrusion offences on the grounds that its was impossible to frame criminal provisions which struck the right balance between privacy and freedom of the press, and the tort on the grounds that (as shown by a consultation paper) there was insufficient public support. It made clear its preference for self-regulation, and pressed for further improvements to the Code of Practice (on the basis of which the Press Complaints Commission adjudicates complaints) and to its procedures and sanctions.

5. Some of these recommendations for better self-regulation have been implemented, but most have not, and the system is still not fully effective, particularly in privacy cases, where coverage breaching the Code can produce great competitive advantage and increased circulation. The main weaknesses lie in the narrow ambit of the Code, and the lack of real sanctions against those who breach it: in practice, nothing more than censure. This is shown by fact that Earl Spencer, though a complaint about press treatment by his wife was upheld by the Commission, referred it to the European Commission of Human Rights in Strasbourg.

6. The Government has indicated its preference for self-regulation, and its reluctance to see statutory regulation or a privacy law. It is, however, committed to incorporation of the European Convention on Human Rights, and it may be that, whatever is said on the face of the incorporating Bill (and this is a matter of current inter-departmental discussion), the domestic courts will provide a remedy for those whose privacy has been infringed by the media if that result has not already been achieved by Strasbourg.

7. This will not, however, foreclose the debate on press regulation as respect for privacy is only one of many provisions in the Code, and in any case use of the courts to protect rights and remedy wrongs is costly and cumbersome. In addition, there is strong public pressure, following the death of Diana, Princess of Wales, for the Government to take action against the sort of press intrusion which the Princess suffered.

8. Various proposals have been made over the years to deal with the issue, that is preventing and penalising journalism which is not in the public interest and which causes distress, while allowing responsible investigative and innocuous journalism to continue. The proposals, which are not necessarily mutually exclusive, include:

i. regulation of the press through a statutory tribunal or ombudsman (comparable with the statutory regulation of broadcasters)

ii. strengthening of self-regulation

iii. enactment of a statutory tort of privacy

iv. tightening of the criminal law to catch particular journalistic abuses, e.g. Calcutt's proposal for an offence of intrusion to obtain material for publication, reporting restrictions and recent harassment legislation,

v. developing the law on matters germane to privacy, e.g. right to reply, data protection, confidence or copyright

vi. encouraging the Courts to develop a privacy jurisprudence (as has happened in the United States), and

vii. incorporation of the European Convention on Human Rights or enactment of a Bill of Rights conferring a right of action for infringement of privacy

9. Some of these proposals have been implemented in part, and some are probably

not runners, but none is easy or straightforward because of the need to preserve the balance between competing rights. The Government will have to consider, in the light of its conclusions about the events in Paris and of the debate on incorporation of the European Convention on Human Rights, whether any further proposals should be implemented.