



LAW OFFICERS' DEPARTMENT
ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

H. Steel CMG OBE

11 August 1983

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Handwritten initials: R 15/8

Handwritten signature: H. Steel

DISCLOSURE OF LAW OFFICERS' ADVICE

We had an unfortunate case recently - not, I hasten to add involving the Home Office - in which a Minister, in answering a written Parliamentary Question, disclosed without the prior authority of the Law Officers the advice which they had given on a problem that his Department had put to them. This was of course contrary to the long-established rules about revealing the advice of the Law Officers which we had assumed to be well understood by all in Whitehall. However, when we expostulated about this particular breach of the rules, we discovered that there was a disquieting ignorance of them in the Department concerned, both among officials and among Ministers, and we fear that this may be true of other Departments also. The Attorney General has therefore instructed me to write round to all Departments to remind them of what the rules are and to ask that those Departments that do not already do so should adopt some procedure for ensuring that the rules are from time to time drawn to the attention of all who need to be aware of them.

Briefly, the basic rule is that it is not permissible, save with the express prior authority of the Law Officers, to disclose to anybody outside UK Government service what advice the Law Officers have given on a particular question or whether they have given any advice on that question or even whether their advice on it has been or is going to be or may be sought. Such prior authority is occasionally given but only in very exceptional circumstances. The rule applies to advice given by one of the Law Officers individually as well as to advice given by the Law Officers collectively and it is equally applicable to advice given by the Scottish Law Officers or one of them. The rule prohibits not only express reference to advice given by the Law Officers but also indirect reference, e.g. by such phrases as "the advice that has been given at the very highest level" or "the Government have been advised". The

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rule applies to all situations and is therefore the basis of the instructions given to Ministers and officials appearing before Committees of either House of Parliament that they should decline to answer questions about advice given by the Law Officers: see, for example, what is said in paragraph 31 of the Memorandum of Guidance for Officials appearing before Select Committees.

I should be grateful if you and the other recipients of this letter would arrange for its substance to be drawn, in whatever way seems appropriate, to all those in your respective Departments, both Ministers and officials, who are likely to come up against the problem and for subsequent reminders of the need to be alert to it be given from time to time.

I am copying this letter to the Private Secretaries to all Ministers in charge of Departments, to Richard Hatfield in Sir Robert Armstrong's office and to Norman Adamson in the Lord Advocate's Department (who has agreed that I might write in the above sense on his behalf also).

Yours ever,
Henry Steel

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