



PRIME MINISTER

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LOCAL GOVERNMENT, PLANNING AND LAND BILL

1. Mr Foot and Mr Cocks came to see the Chief Whip and myself at their request yesterday to pursue the Opposition's challenge to our decision to introduce the Local Government, Planning and Land Bill in the House of Lords. You will have seen in Hansard the report of my exchange with the Leader of the Opposition during business questions on Thursday.

2. Mr Foot did not press Mr Callaghan's earlier argument that the Bill is not appropriate to the Lords because it includes provisions on matters of public expenditure and taxation, or claim that because it affects relationships between central and local government it is a constitutional measure. He argued instead that by introducing a bill of this nature in the House of Lords the Government were taking improper advantage of the Conservative majority in that House in a way which would give Conservative Governments a permanent advantage in the number of controversial bills that they can take through Parliament in one session. He claimed that it is not open to a Labour Government to introduce a controversial bill in the House of Lords because the Conservative majority could defeat it, and that a proper constitutional balance requires the Lords not to take a controversial bill until it has been considered by the Commons and the Lords have been placed under the constraint of the declared wishes of the elected chamber.

3. This is an ingenious argument which will no doubt attract the applause of Labour back benchers. I do not however think we should accept it. There is no established authority for it: Erskine May acknowledges in a brief reference that bills which are likely to arouse political controversy are "generally" introduced in the House of Commons, but the issues which are important in his analysis are those which affect the financial privilege of the Commons and on which the Opposition's case is weak - as they may now have recognised. Although no bill as large and as controversial as the Local Government, Planning and Land Bill has latterly been introduced first in the House of Lords, we can reasonably say that it would be contrary to the well-established practice of the Lords to refuse a second reading to any government bill; that there has been no evidence in recent years to show that the Lords have at subsequent stages been more favourably disposed towards bills coming from governments of one party than towards those from another; and that there has been no recent instance in which the Lords have insisted on rejecting a Commons amendment to a Lords Bill, or have insisted on a Lords amendment to a Commons amendment. I expect the Lord President would also agree that the Lords would in practice be influenced as much

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by the fact that the government had been recently elected with a clear mandate as they would by the bill's previous passage through the Commons. I attach an analysis of Lords proceedings on government bills introduced in that House since 1966-67 which would support a reply on these lines. (We must of course acknowledge that the Parliament Acts do not apply to Lords bills.)

4. The assertion that a Labour Government cannot introduce a substantial bill in the Lords for fear of defeat is not therefore based on evidence or experience, and it is in fact simply a reflection of the Labour Party's view - which we do not share - of the place of the House of Lords in our legislative system.

5. Apart from these theoretical arguments, the practical consequence of giving way would be serious. If we withdraw the Bill from the Lords we shall almost certainly have to make a choice between losing it for this session and extended sittings in the summer and autumn to secure our programme. Either course would expose us to serious criticism from our own supporters. It might be possible to divide the Bill so that the less controversial provisions remain in the Lords and the rest are withdrawn and re-introduced in the Commons, but we should still be faced with the same choice - and the more controversial provisions are naturally the most important to us politically. We should also have set a precedent, contrary to our own principles, which would limit our freedom of manoeuvre for the rest of this and for subsequent Parliaments.

6. I therefore consider that we should stand by our decision to proceed with the Bill in the House of Lords. There is, however, one concession which we might offer, and that is a day's general debate in the House of Commons, on a motion for the adjournment. This would allow the Commons to consider (and vote on) the controversial aspects, especially as regards the proposals on local government. The concession would not, and would not be intended to, meet the Opposition's point of principle; but it would show that we are ready to be flexible and it would provide an answer to the criticism, also made during business questions last week, that we are not treating the Commons with proper consideration. We should however make clear that the purpose of the debate would be to enable the House to consider a matter of immediate and general interest, and not an attempt to meet the argument that the Lords should never consider a substantial bill until it has been taken in the Commons. For the reasons which we discussed in Cabinet last week, it will be difficult to find time for such a debate before Christmas; and I would of course provide it only if the Opposition accepted it in a spirit of co-operation and did not continue their threat to disrupt the programme. We could then hope to obtain our other business before Christmas relatively cheaply (including the Zimbabwe and Employment Bills) so that the overall loss of Parliamentary time would not be significant. I should say that I have no great confidence that the offer will be accepted in this spirit, but I think it would be worth making as a gesture of good will.

7. There is also a problem of timing. The Chief Whip will be discussing business up to Monday, 17 December, with the Opposition

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tomorrow, and it will be announced on Thursday. If the offer is to be made we should make it then. If you agree, I will put it to Mr Foot tomorrow, and we can then if necessary consider his reaction and any further action on our part in Cabinet on Thursday.

8. I am sending copies of this minute to our colleagues in Cabinet, to the Minister of Transport and the Chief Whip, and to Sir Robert Armstrong.

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4th December 1979