PT

Prime Minister

I very much share this view: if we are going to do this, we ought to do it next week.

PRIME MINISTER

TEACHERS' PAY

At today's Cabinet meeting, we decided in principle to seek Parliamentary resolutions to set aside the teachers' arbitration awards in England and Wales. I understand that we will be considering the implications of this further on Monday.

2. Before we come to a final decision on timing, I wish to put on record my strongly held view: namely, that to decide on this action but not to implement it until October would put the Government in an indefensible position.

3. This is not primarily a legal point. The argument rests rather on these grounds:

a. We would be giving our opponents inside the educational world and elsewhere three months in which to mount a campaign against our decision;

b. The justification for such a campaign would be strengthened by its being represented as an attack on Government policy, rather than against a Parliamentary decision;

c. Parliament itself might feel some grievance at not having been given an opportunity to express its opinion before rising, given that the Government had been in possession of the awards for 2 weeks while they were still sitting;

d. During the intervening months, employing local authorities would be unable to pay teachers any part of the extra pay due to them from April (even the lower increase which we would implement if Parliament set the award aside);

e. All these considerations would make it much harder to win Parliamentary approval in October than now.

4. Moreover, if we went ahead with the Parliamentary procedures next week and were successful, this would strengthen our hand in taking a similarly tough line with the Scottish teachers, even though that award could not be taken to Parliament until October.

5. I conclude that deferring the Parliamentary resolutions until October would be politically extremely damaging, and that the balance of advantage lies wholly in going ahead next week in spite of the very real difficulty, which I appreciate, of the crowded timetable in both Houses.

6. I am copying this minute to all members of the Cabinet, the Attorney General, the Chief Whips in both Houses and Sir Robert Armstrong.

M. E. Bowden

for MARK CARLISLE
31 July 1980

(Approved by the Secretary of State and signed in his absence)

MARK CARLISLE
July 1980

31 JUL 1980

Education
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PRIME MINISTER

TEACHERS' PAY

BACKGROUND

The Committee has before it three minutes to you: of 31 July from the Secretary of State for Education and Science; and of 1 August from the Attorney General and from the Lord Advocate.

2. The Secretary of State for Education and Science argues that to defer the Resolutions until October would be politically extremely damaging, because it would give the teachers and others three months in which to mount a campaign against the Government. He recommends that, if action is to be taken it should be next week, notwithstanding the difficulties of finding time for the Resolution.

3. The Attorney General lists five options in his paragraph 8 and analyses them in his paragraph 9. They are as follows -

a. To move the Resolutions next week -
This is free from legal difficulty. It is the course which the Education Secretary recommends. But time would then have to be found for the Resolutions in both Houses.

b. To announce next week that the Government will definitely seek Resolutions when Parliament reassembles and that the present pay scales will continue in the meantime -
There could be no Court action. But there would be considerable criticism, and possibly strikes.

c. To announce next week that the Government is considering action when Parliament reassembles -
There is a risk of probably unsuccessful Court action, and of criticism both of the delay and of the uncertainty.

d. To give no indication at all of the Government's intentions until Parliament reassembles and then to seek Resolutions -
Successful legal proceedings would then be much more likely. Again there would be criticism of delays and of uncertainty.

e. To announce the intention of seeking Resolutions when Parliament reassembles, and to pay an interim award of, say, 9.2% immediately -
This attractive course is unfortunately ultra vires.

4. The Chancellor may want to canvass the further option of offering the teachers the choice between taking the 9.2 per cent offered and taking the award in full and cuts in numbers to offset the extra cost. That would enable proceedings in Parliament to be deferred while the teachers made up their minds; but I am not sure how real an option it is. The second limit - the award in full offset by staff cuts - would be very much less certain than cutting the award, because of the scope for argument between the employers and the unions as to how the cuts should be effected and distributed.

HANDLING

5. After the Attorney General and the Lord Advocate have spoken to their minutes, you might invite the Secretaries of State for Education and for Scotland to advise on how they now see the problem.

6. On the Attorney General's analysis the choice is effectively between his a. and b. : that is, Resolutions next week, or an announcement next week of Resolutions immediately after the Recess. For Scotland, where the awards will not be known for two or three weeks, the main possibility is to announce then that Resolutions will be moved after the Recess.

7. The Secretary of State for Education and Science makes a powerful case for the first course. But the Chancellor of the Duchy of Lancaster and the Lord President will wish to advise whether it is still a practicable option. They and the Chief Whip will also wish to advise whether they are now able to give firmer advice on the Government's chances of winning next week - and you will recall that some Members of the Cabinet laid great stress on the importance of this.

8. Both the Attorney General and the Lord Advocate seem to be consistent but, if Parliament passes resolutions in accordance with the correct procedures, there would be no legal basis for challenging them. I think you should press them on this. Is it really beyond doubt that the teachers' unions would be unable to find grounds for challenging the resolutions in the courts on the grounds that they were ultra vires, even if correctly laid? If they could find a way of getting a case into the courts, and the case reached the Court of Appeal, what might Lord Denning make of it? For the Secretary of State to be overruled by the Master of the Rolls would not be a happy outcome.

9. If, for reasons of the Parliamentary timetable, Resolutions next week are impracticable, the choice seems to be -

i. to announce the decision next week (and for Scotland when their awards are known) that the Government will seek Resolutions after the Recess, accepting that an effective campaign will probably be mounted in the meantime;

ii. to concede the awards.

CONCLUSIONS

10. In the light of the Committee's discussion you will wish to record conclusions -

either

i. agreeing that Resolutions should be moved in both Houses next week, and agreeing how the Business of both Houses should be changed to accommodate them,

or

ii. agreeing that decisions should be announced next week (or possibly as soon as the Scottish arbitral awards are known) that Resolutions will be moved after the Recess.

or

iii. agreeing that on practical grounds, and notwithstanding the merits of the case, the awards should be allowed.

and

iv. provisionally on the action to be taken when the Scottish awards are known.

ROBERT ARMSTRONG

(approved by Sir R. Armstrong and signed on his behalf.)

1 August 1980

SECRET

ATTORNEY GENERAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

1 August 1980

PRIME MINISTER

TEACHERS' PAY

At Cabinet yesterday I was requested to advise on various courses of action on teachers' pay on the basis that HMG must seek to reject the arbitrators' recommendations in ACAS papers 2C/192 and 194 of 1980.

2. I understand that SOS(E) will publish the recommendations later today and say that HMG is considering its response. We have to decide what to do after this, and when.

3. My first point, to which I attach great importance, is that all announcements must be strictly consistent with the prior decisions HMG has taken. Failure to ensure this could have very grave consequences, especially if the teachers brought legal proceedings.

4. It may be helpful if I first give the statutory background. Under the Remuneration of Teachers Act 1965, which governs the pay of teachers in England and Wales, SOS(E) has a statutory duty (in section 2) to give effect in full to the recommendations of the appropriate committees. This is done in each case by means of a draft document setting out the new scales on which SOS(E) has to consult the committee responsible, and effect is then given to the new scales by his publishing the agreed document and making an order in respect of it; the scales have the force of law under section 5.

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SECRET

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

5. If a committee cannot decide on a recommendation to put to SOS(E), arrangements for arbitration have to be made under section 3. This occurred when the two sides of the Burnham Committees on primary/secondary and further education failed to agree on pay scales for 1980/81; and we now have the two sets of arbitral findings.

6. Under section 4 of the 1975 Act, SOS(E) has the same duty to give effect to arbitral findings as he does in the case of agreed committee recommendations under section 2, unless the "two House resolution procedure" is successfully invoked under section 4(2).

7. I have already advised on the substance of section 4(2). I will not repeat or add to that advice except to say that -

(1) the"Clegg error" is irrelevant to section 4(2) in the sense that it is not a matter that can properly be taken into account in deciding whether to invoke that provision, although I concede that it is relevant for assessing the real value of the award;

(2) if the resolutions are passed in each House according to the correct procedure, there is no legal basis for attacking them; and

(3) in that event, SOS(E) is obliged to determine what pay scales are appropriate in the circumstances and, after consulting the relevant committees, to give effect to them as if they had been their agreed recommendations (section 4(3)).

8. Against this background the following options for proceeding have been identified, and I list them in what I

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ATTORNEY GENERAL

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see as ascending order of legal difficulty.

A. Seek section 4(2) resolutions forthwith, before the recess begins.

B. Announce next week, or soon after the recess begins, that HMG will definitely seek resolutions when Parliament reassembles. The old pay scales to continue in the meantime.

C. Announce next week, or soon after the recess begins, that HMG is considering action under section 4(2) when Parliament reassembles. The old pay scales to continue in the meantime.

D. Do nothing and make no announcement until Parliament reassembles, but then seek resolutions. The old pay scales to continue in the meantime.

E. The same as B, save that HMG would mention a figure, say 9.2%, which it thought was the appropriate increase for 1980/81, and would authorise it to be paid immediately. Assuming resolutions were obtained, the object eventually would be to fix the increase for 1980/81 at 9.2% by means of the section 4(3) procedure; no larger amount would be payable unless the resolutions failed.

9. I have the following comments on these options.

A. This is free from legal difficulty.

B. Safe, although the delay would attract criticism. The courts would not be able to assist the teachers so long

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as HMG was on record as intending to use section 4(2).

C. Here it is possible that the teachers would apply to the courts during the recess for a declaration (the only relief available in such cases against the Crown) that SOS(E) was bound to give effect under section 4(1) to the current arbitral recommendations.

I do not think that such an action would be successful because the courts would almost certainly say they were disabled from giving relief so long as HMG were on record as contemplating action under section 4(2). There could be criticism of the delay but that would be unlikely to affect the outcome under this option.

D. In this case legal proceedings by the teachers are much more likely and they would have a better chance of obtaining the declaration mentioned in C above by the end of the recess on the grounds (a) that there was no evidence that section 4(2) was going to be invoked and (b) there had been unreasonable delay by SOS(E) in carrying out his section 4(1) duty. In any event, legal proceedings by the teachers would probably force an announcement that section 4(2) was to be invoked, as in the case of option C, and HMG's earlier silence would be criticised. This option would be a dangerous course to follow and I cannot advise it.

E. This course would be <u>ultra vires</u> the 1965 Act because under that Act no change in the pay of teachers can be introduced without meeting such requirements as are applicable under section 2; and it would not be

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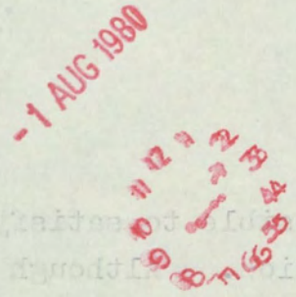
possible to satisfy these requirements under this option. Although legal proceedings by the teachers are less likely here than if options C or D were adopted, an ultra vires course is unthinkable.

10. If the decision is to resort to section 4(2) but resolutions under it are not carried in both Houses, then of course SOS(E) has an immediate statutory duty to give effect in full to the current arbitral recommendations and there is no escaping it.

11. The Lord Advocate will be advising separately in relation to the law of Scotland where a different Act applies.

12. This is copied to all members of Cabinet, the Lord Advocate, the Minister of Transport, the Chief Whips in both Houses and Sir Robert Armstrong.

M.H.


- 1 AUG 1980

CONFIDENTIAL

THE LORD ADVOCATE

PRIME MINISTER

TEACHERS' PAY

I understand that at Cabinet yesterday my views were requested on the various courses of action open to HMG in relation to pay awards to Scottish teachers.

The legal provisions in Scotland are contained in the Remuneration of Teachers (Scotland) Act 1967 and in most respects, and in particular Section 4(2), are in substantially the same terms as the English provisions, subject to one qualification which I mention below.

I have seen a copy of the Attorney General's minute to the Prime Minister of today's date and if the Scottish Act were applicable in the circumstances which he considers I would agree with his advice as applying to Scotland. Since I have not previously been asked to express my opinion on Section 4(2) I would simply underline the phrase "national economic circumstances require" - this strikes me as a fairly strong test to be contrasted to such a phrase as "national economic circumstances make expedient", but if both Houses of Parliament pass such a resolution in accordance with the correct procedures, there would be no legal basis for challenging it. Likewise I agree that the "Clegg error" is irrelevant in the sense described in paragraph 7(1) of the Attorney's minute.

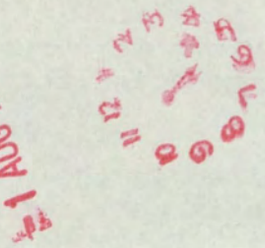
The five options apply equally in Scotland, assuming that an arbitration award has been made. It would be for consideration as a further option whether if HMG intimated its intention to seek a resolution under Section 4(2) an interim adjustment could be made either by agreeing it with the relevant committee in terms of Section 2 of the Scottish Act or, before the Scottish arbiters give their decision, by amending the arrangements for the arbitration in Scotland under Section 3(1) to include an interim provision.

Copies of this minute go to all members of Cabinet, the Attorney General, the Minister of Transport, the Chief Whips to both Houses and Sir Robert Armstrong.

J.M.

MACKAY OF CLASHFERN
1st August 1980

CONFIDENTIAL


21 AUG 1980

Education

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PRIME MINISTER

Teachers' Pay

BACKGROUND

The main papers are the minutes to you of -

i. 28 July from the Secretary of State for Education summarising the arbitration awards for 1980 for the pay of teachers in schools and further education in England and Wales.

ii. 29 and 30 July from the Chancellor of the Exchequer proposing that Parliament should be asked to set aside these awards.

iii. 29 July from the Chancellor of the Duchy of Lancaster on the difficulties of finding the necessary time in the House of Commons before the Recess.

iv. 30 July from the Secretary of State for Scotland in support of the Secretary of State for Education.

v. the letters of 9 and 25 July from the Attorney General to the Secretary of State for Education on the use of Resolution procedures in the two Houses.

2. The arbitration awards are summarised in paragraph 2 of the Education Secretary's minute of 28 July. They provide for increased costs in pay of 13½ per cent in 1980-81 (compared with the 13 per cent allowed for in the Rate Support Grant cash limit) and for 14.6 per cent in a full year. They are on a base which includes the cost of the Clegg error.

3. Before the error was discovered the Management Panel, of which the Government forms part, voluntarily offered a 13 per cent increase (that is, the amount allowed for in the cash limit). They subsequently amended this to 9.267 per cent to allow for the Clegg error of 3.7 per cent. In

arriving at their decision the arbitral body appear to have taken account of the 13 per cent as an indication of what the Government were able to pay. In a full year the offer of 14.6 per cent would cost £54 million more than one of 13 per cent and £179 million more than one of 9.3 per cent.

4. The Government has either to accept the awards or to invite both Houses of Parliament to set them aside by Affirmative Resolutions. The Government would have to satisfy both Houses that 'national economic circumstances required that effect should not be given to the recommendations' and to recommend an alternative figure. The Attorney General has advised, in his letter of 9 July, that it is not sufficient for the Government simply to dislike the award, but he accepts that "national economic circumstances" embrace the Government's overall view of the economic situation, including unemployment and pay levels in the economy as a whole.

5. The Secretary of State for Education argues that it would be very difficult to set the award aside, on grounds of national economic circumstances, when the Government said in April that it could offer 13 per cent (though in practice the present offer is slightly more than that). The Attorney General in his letter of 25 July thinks that this is a sound point.

6. The Chancellor of the Exchequer argues that the case can be made for overriding the award. The TSRB proposals could have been accommodated within cash limits, but that was not accepted as a reason for approving them. Since the offer of 13 per cent was made the economic situation has deteriorated, the local authorities have run into increasing difficulties over their expenditure, and a massive error in the previous award has been identified.

7. The arbitral body dealing with the Scottish teachers is likely to make its recommendations in about a fortnight. The Management Panel has proposed 14 per cent to them. If it is accepted that they must be treated similarly to England and Wales, it is likely that further Resolutions would be needed after the Recess to overrule their arbitration award.

8. If the awards are accepted, the Secretary of State for Education and Science wishes to announce them in a Written Answer before the weekend. If they are to be overridden, this will have to be announced in the Business Statement tomorrow, and time found in each House for the necessary Resolutions.

9. As to Parliamentary time, although the Resolutions of the two Houses are independent of one another, it would clearly be objectionable for the Lords Resolution to be moved before the Commons have reached a decision. I understand that the Lords business managers could most conveniently arrange for the Resolution to be debated on Wednesday, 6 or Thursday, 7 August. That points towards holding the Commons debate in the early part of next week. As the Chancellor of the Duchy of Lancaster points out in his minute of 29 July, it would be difficult to justify taking a debate on a subject of this degree of contentiousness late at night, and if it is decided to move the Resolutions it may have to be at the expense of some other item of Government business in the Commons. Monday is devoted to the Consolidated Fund (Appropriation)(No 2) Bill. Tuesday will be taken up with the consideration of the Lords amendments to the Housing Bill, and motions on the financing of British aerospace and the National Enterprise Board. You will wish to ask the Secretary of State for Industry whether these motions could, if necessary, be postponed; but tempers will already be running high on the Housing Bill amendments, and that might provide an unhappy climate for moving the teachers' pay Resolution. On Wednesday, the Commons will be considering the Lords amendments to the Tenants' Rights (Scotland) Bill and to the Health Services Bill. Could these wait until after the Recess? Presumably preferably not. There is opposed private business at 7 pm (including the moving of a mandatory instruction to the Committee to delete from the Greater Manchester Bill the proposed provision on the extension of direct labour), and a number of agricultural motions have also to be moved. If no place for the Resolution could be found in the first three days of the week, it would be necessary to look at Thursday; but that is a particularly congested day with the Procedure debate being followed by motions on Members' salaries and on financial aid to Opposition parties, the remaining stages of the Highways Bill, and the proceedings on the Statute Law Revision (Northern Ireland) Bill. You will wish to ask the Chancellor of the Duchy of Lancaster whether any time could be taken from the Procedure debate or the motion on salaries to accommodate an hour and a half's debate on the Resolution.

HANDLING

10. You will wish to invite the Secretary of State for Education and Science to make his case for accepting the awards and then invite the Chancellor of the Exchequer and the Secretary of State for Employment to comment on the implications for pay policy and the case for overriding them. The

Secretary of State for Scotland will wish to explain the implications for the Scottish teachers. The Attorney General can advise on any legal impediments to the proposed Resolutions. The Chancellor of the Duchy of Lancaster, the Lord President of the Council and the Chief Whip will wish to comment on the practical difficulties of finding time for the Resolutions next week and on the chances of the Government winning.

11. The Cabinet will wish to consider first whether the awards are acceptable in principle. Although they are additional to a base inclusive of the Clegg error, the arbitral body were aware of that error and of the Management Panel's view when coming to their decision.

12. If the Cabinet decides that the award is unacceptable in principle, it will then need to consider what the figure should be - presumably the 9.3 per cent recommended by the Management Panel in the light of the Clegg error - and what would be the practical difficulties of overturning the award. There are three questions -

i. Is the Government likely to win in both Houses?

ii. If not, is it better to risk losing than to do nothing?

iii. How can time be found in each House before the Recess?

13. If the Government is to recommend Parliament to override the awards it will have to propose an alternative figure. The most obvious would be the 9.3 per cent proposed to the arbitral body by the Management Panel.

CONCLUSIONS

14. In the light of the discussion you will wish to record conclusions on -

1. Whether to accept the arbitration awards and, if so, whether to authorise the Secretary of State for Education and Science to announce the decision in a Written Answer this week.

Or

2. a. Whether to seek to override them by Affirmative Resolutions in both Houses.

b. How the time should be found for those Resolutions.

c. Whether the alternative figure recommended by the Government should be 9.3 per cent.

d. Any points on Scottish teachers.

RWA

ROBERT ARMSTRONG

30 July 1980