

Ref.A084/926

PRIME MINISTER

Local Government Commissioner Legislation

BACKGROUND

Work has been in progress for some months on legislation which would empower the Government to remove local councillors from office and replace them by Commissioners appointed by the Secretary of State.

2. The main features of this legislation, as already agreed by Ministers, are as follows. Commissioners would replace the dismissed councillors and exercise their powers to run the local authority. They would have the usual power to set a budget and levy a rate; they would also have a power to levy a single emergency rate notwithstanding the general legal bar to supplementary rates. They would hold office for an initial term of the remainder of the financial year in which they were appointed, plus the following financial year. This term could be extended by Order. When they vacated office there would be an election for new councillors.

3. Ministers have agreed that Commissioner legislation should be introduced only in response to a manifest crisis in one or more local authorities, such as might be precipitated by current developments in Liverpool. Once enacted, however, the legislation would remain on the statute book as a permanent part of the corpus of local authority law. Although it would be most likely to be used against a local authority which mismanaged its financial affairs - perhaps in protest against the effects of selective rate limitation - it would be capable of application in a wide range of circumstances.

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4. The minute of 12 March from the Secretary of State for the Environment, and the memorandum enclosed with it, make detailed proposals and raise certain questions for decision within the framework already agreed. You are holding a meeting of Ministers at 3.00 pm on Monday 26 March to discuss the issues.

5. The Secretary of State for Transport has commented in his letter of 14 March to the Secretary of State for the Environment. The Secretary of State for Wales
 — has commented on Mr Jenkin's proposals in his minute of 16 March.

MAIN ISSUES

6. The purpose of the meeting is to consider the matters summarised in paragraph 19 of the memorandum enclosed with the Secretary of State for the Environment's minute of 12 March. Many of the proposals there seem likely to be readily accepted. Those most likely to need extended discussion are as follows.

(i) Whether the Secretary of State should have a power of general guidance or a power of general direction over a Commission (paragraph 6).

(ii) Whether Commissioners should be required to hold at least one public meeting a year (paragraph 12).

(iii) Whether Commissioners should be paid from central funds (paragraph 8).

(iv) The period of appointment of Commissioners (paragraph 10).

Paragraph references are to the memorandum; I have listed the issues in the order in which it is likely to be most convenient for the meeting to take them.

General Considerations: Accountability

7. If Commissioner legislation ever has to be introduced it will be a matter of the keenest controversy. Whatever it provides will be criticised. Ministers will therefore wish to ensure that the provisions embody a clear and coherent philosophy. It will be particularly important to be clear on whom Commissioners are accountable to, and how that accountability is to be enforced.

8. As paragraphs 2 and 3 of the memorandum point out, Commissioners will have much the same accountability to the courts as do local councillors for:

(a) the performance of particular statutory duties, whether under Commissioner legislation or other enactments;

(b) fiduciary responsibilities to local ratepayers.

9. What is at issue is more general political accountability. It seems clear that Commissioners cannot be accountable to the local electorate: there is no way in which any such accountability could be enforced; and it is quite possible that the reason for displacing elected councillors was that they were following irresponsible policies for which they could, nevertheless, claim a local mandate. It follows that the accountability of Commissioners must be to and through the Secretary of State; and that Ministers in defending the legislation would need to be able to demonstrate that the arrangements for enforcing that accountability were adequate.

Guidance or Direction

10. These considerations are particularly relevant to the question whether the Secretary of State should have power to give directions to Commissioners or only guidance. The Secretary of State for the Environment (supported by the Secretary of State for Wales) strongly prefers a power of guidance. The Secretary of State for Transport would prefer powers of general direction. The main arguments in favour of this are as follows.

(a) Powers of specific direction could lead to pressure on the Government to intervene in day-to-day decisions: all manner of Parliamentary Questions, for example, could be put down about detailed local matters. A power of general direction, however, would probably be so broad as to be largely useless (certainly the powers of general direction in the nationalised industry statutes have proved almost unusable).

(b) Commissioners will be appointed and dismissed by the Secretary of State. They will presumably be correspondingly ready to accept guidance from him.

(c) So far as possible, the existing legal framework of relations between central and local government should be maintained: central Government proceeds by guidance, not by directions, in its relations with local authorities.

11. On the other hand:

(d) Powers of general direction may be needed to ensure that the Commissioners are, and are seen to be, under the Government's control (the Secretary of State for Transport's point).

(e) There may well be matters on which it will be positively convenient for the Commissioners to be able to say that they are acting under direction of the Secretary of State.

(f) There is a risk that, if Commissioners receive no more than guidance, they will effectively be accountable to no one. The only person to whom they can be accountable is the Secretary of State; in practice, it may not be possible for him to call Commissioners to account for failure to observe guidance which, by definition, is not binding.

(g) If this argument is countered by pointing out that the Secretary of State will have unfettered powers to dismiss Commissioners, then that power itself would provide a foundation for detailed questioning and demands for intervention.

(h) The arguments about pressure for intervention may be overstated: even if there were a general power of direction, it should be possible to establish a convention that Ministers would refuse to answer detailed questions about the affairs of a particular Commission.

Public Meetings

12. The Secretary of State for the Environment suggests that Commissioners should be obliged to hold one public meeting each year to explain their stewardship and answer questions. The Secretary of State for Wales disagrees, on the grounds that such meetings would probably be open to disruption and that they would imply an accountability to the local electorate which clearly cannot exist.

13. A possible compromise would be to empower Commissioners to hold public meetings, but not to require them to do so. On the other hand, if explicit provision for public meetings is made in the legislation, it may be hard for Commissioners to resist demands for them to use the provision. Even if the legislation is silent on the point, there is no obvious reason why a particular set of Commissioners in particular local circumstances should not decide to hold a public meeting.

Payment of Commissioners

14. The Secretary of State for the Environment proposes that the remuneration, pensions and expenses of Commissioners should be a charge on central funds and not, as previously proposed, the local authority concerned. The cost is assessed as £500,000 to £750,000 a year for each Commission. Ministers will wish to weigh two conflicting considerations.

(a) On the one hand, there is no doubt that Commissioners will be appointed for the benefit of the local community; it would thus seem reasonable that that community should be asked to defray the cost, especially as it will presumably be saving money that would otherwise be spent on the allowances and expenses of local councillors.

(b) On the other hand, Commissioners will be appointed by and answerable to the Secretary of State, who will decide their remuneration. The local community may well dislike the appointment of Commissioners; and it would give local critics an unnecessary debating point if they could accuse the Government of demanding financial restraint while imposing allegedly expensive Commissioners.

Period of Appointments

15. The proposals previously agreed by Ministers envisaged that Commissioners would hold office initially for the balance of the financial year in which they were appointed and the whole of the next financial year: this term could be extended by Order.

The Secretary of State for the Environment now proposes that the initial term should be for only one year from the time of appointment, on the grounds that this might be more acceptable. Again, the term could be extended by Order.

16. The Secretaries of State for Wales and Transport argue against this, in my view rightly, on the grounds that it would probably not allow Commissioners long enough to restore financial order. What they no doubt have in mind is that the original proposal would usually allow a Commission to decide the budget and rate for two successive years. This might well be the minimum necessary to restore financial order and to demonstrate that the effects of doing so were tolerable. If this is right, it may not be sufficient to rely on the possibility of extending the first term of appointment. In practice, this may not be easy to do. The likeliest justification would be the prospect of continued financial irresponsibility; but, even if many likely candidates for local office professed determination to precipitate financial collapse, it is unlikely that all would; and Ministers might not find it easy to defend anticipating the result of a local election.

HANDLING

17. You will wish to invite the Secretary of State for the Environment to open the discussion and the Secretary of State for Wales to follow. Any of your colleagues with responsibilities for local government may wish to contribute. The Chief Secretary, Treasury will no doubt wish to comment on the proposal to defray the cost of Commissioners from central funds. The Lord President of the Council and the Lord Privy Seal will be able to advise on legislative aspects, and the Attorney General on any legal points.

CONCLUSIONS

18. You will wish the meeting -

- (i) to approve or reject the proposals summarised in paragraph 19(a) to (f) of the memorandum enclosed with the minute of 12 March from the Secretary of State for the Environment; and particularly: (b) payment of Commissioners from central funds, and (d) the holding of at least one public meeting a year;

(ii) to give the Secretary of State guidance on:
(g) whether there should be a power of general direction or of general guidance; and (h) whether the initial period of appointment should be one year, or until the end of the financial year following the Commission's appointment.

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ROBERT ARMSTRONG

23 March 1984