



Prime Minister (2)  
 To note response on  
 the Gevion case. AT  
 8/10

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My ref:

Your ref:

5 October 1984

Dear Andrew

Thank you for your letter of 25 September about a case which has been drawn to the Prime Minister's attention where the GLC had proposed to lease equipment for a three year term, on payment of a once-for-all lump sum at the outset. You asked in particular whether such practice represents a major avoidance of the controls over the activities of the abolition authorities that are contained in the Local Government (Interim Provisions) Act 1984, and whether it appears to be widespread.

I attach a background note on the controls which explains how they relate to contracts entered into by the GLC and the metropolitan county councils. In the absence of any details about the proposal by the GLC it is difficult to offer advice about whether the controls would bite in such a case. In particular the value of the contract might be below the £100,000 threshold above which consent is required, or the proposal might not have reached the stage at which the GLC wished to apply for consent.

If, nonetheless, the proposal is above the value threshold in the Act, it is clear that the method of payment under the contract would not be material in determining whether consent is required. Arranging payment in the manner described cannot, therefore, be regarded as a device designed to circumvent the controls: indeed, it could be argued that this would be to the benefit of successor authorities since it would relieve them of any financial commitment. If consent were sought we would nevertheless wish to be satisfied that the contract would neither bind successor authorities unnecessarily to a particular mode of service provision nor involve needless overprovision.

\* Such evidence as we have appears to show that all the authorities concerned are taking the controls seriously: we have received no reports of major or widespread evasion, as we might expect to do if it were occurring. We have not received a sufficiently large number of applications concerning contracts to be able to say whether the method of payment proposed in this case is exceptional.

\* But how can DoE know when it is the responsibility of the authority to initiate consent

Finally, it is not clear if the leasing company withdrew because of their concern about the effect of the controls. But as the background note explains, they would have no reason to be concerned that the contract might, for example, be terminated prematurely solely on the grounds of the Act being contravened. Indeed, one minor difficulty that we have had in operating the controls has been to counter propaganda, particularly from the GLC, that third party interests are being adversely affected by the new controls.

*Yours sincerely*

*John Ballard*

J F BALLARD  
Private Secretary



Background note

LOCAL GOVERNMENT (INTERIM PROVISIONS) ACT 1984  
COUNTER-OBSTRUCTION PROVISIONS

1. The controls in sections 7, 8 and 9 of the LG (Interim Provisions) Act require the GLC and metropolitan county councils to obtain the Secretary of State's consent to, respectively,

- expenditure after 1 April 1985 under s.137, LG Act 1972 (the '2p rate' provision);
- disposals of land; and
- contracts

Section 9, which concerns the authorities' entering into contracts, specifies the financial limits above which consent is required: these range from £100,000 to £250,000 depending on the nature of the works or services provided. In considering whether the financial limits have been exceeded, an authority must take into account the consideration under any contract of the same or similar description entered into during the previous 12 months.

2. On application by a constituent council or by a local government elector in the relevant area to the High Court, a failure to obtain consent may result in the council members responsible for entering into a contract being disqualified from membership of the abolition authority and any other authority for such periods as the court may specify. It is, however, for the authority to decide if a particular contract requires the Secretary of State's consent, and the stage, before a contract is let, at which they seek such consent. The Secretary of State has no power to 'call in' a particular proposal for decision; and the Act specifically provides that a person entering into a contract with the authority shall not be concerned to inquire whether any consent has been given. It also provides that a contract shall not be void by reason only that consent has not been obtained.

3. Applications for consent are considered in the light of whether they might be "obstructive" in the sense of being prejudicial to the Government's abolition proposals or to the interests of successor authorities or their ratepayers. Contracts for periods extending beyond 1 April 1986 are accordingly subject to careful scrutiny; but the making of a single payment at the outset of a leasing agreement might not in itself be considered obstructive, since it would not result in any financial commitment to be met by successors. Such an arrangement would not be a means of avoiding the controls because these are concerned with the total consideration under the contract, and not the method of payment; and it could conceivably offer the lessee some financial advantage.

DOE/LG5

October 1984