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PRIME MINISTER

VILLAGE SCHOOLS

attached at flap PTS

You asked me last summer to consider ways in which parents might be able to keep alive village schools which would otherwise be due for closure, offering as a starting point a paper prepared by Oliver Letwin.

2. He and my officials have since then worked through the possibilities. They considered three possible models designed to form a bridge between the maintained and independent sectors of education by creating a class of village school, which, although technically independent, would be assisted to a greater or lesser extent by the Local Education Authority in whose area it was situated. Under the first model there would be legislation to require LEAs, when proposing to close a village school, to give financial assistance to anyone who could show that they were willing and able to continue running the school to an acceptable standard, provided the assistance did not reduce the savings that would otherwise accrue to the Authority from the school's closure. Under the second model, LEAs would be encouraged, but not required, to offer assistance to keep the school going, but there would be no limit to the assistance and no financial incentives from the Government. Under the third model, LEAs would be encouraged, but not required, to offer assistance, and might receive Education Support Grant or other assistances on a pump-priming basis.

3. I enclose a paper analysing the models. Model 1 is the most radical, but I do not regard it as realistic: it will cause certain hostility among LEAs for very little

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gain, and I judge that in practice there would be very few takers for it. Model 2 is hardly more than a statement of the possibilities which are already open to concerned parents, and I think it telling that so few actually make use of them. Model 3 is effectively a variant of Model 2, and, again, I do not consider that it could generate sufficient take-up to justify the opposition it would provoke.

4. The real difficulty with each of the models - and this would apply to any further variants - is that they run counter to our policies on falling rolls and size of schools. We do already offer positive assistance to village schools which need to remain open for geographical reasons: LEAs can get Education Support Grant on a pilot basis for projects designed to enrich the curriculum and otherwise compensate for the difficulties which arise in such small schools. It would be another thing entirely to offer public money to schools where both the educational and the financial case for closure is clear.

5. The issue has well merited a full exploration, but against this background, I think you may agree that it should not now be pursued further.

KJ.

K J
Department of Education
and Science

20 February 1986

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VILLAGE SCHOOLS

TECHNICAL FEASIBILITY

GENERAL

1. Because of difficulties of definition, it would not be feasible to limit the scheme to "village" schools which LEAs are seeking to close. It would be best to extend it to all primary schools, certainly as respects Model 1 and possibly also Model 3. Model 2 would by definition be open to schools of all sorts.

MODEL 1

2. An LEA planning to close a primary school would be under a duty:

- i. to determine whether there was a group of local people (the proposers) who wished and were able to promote a financially and educationally viable proposal for running the school as an independent alternative, but with financial assistance from the LEA.
- ii. if it so determined, to include within the published closure proposal a statement of the alternative proposed.

As a result the necessary consultations would relate both to the LEA's proposal to close and the alternative. The Secretary of State would have both before him. A proposal under (ii) would always fall to be decided by the Secretary of State, and, if he so decided, the LEA would be under a duty to provide financial assistance at the indicated level.

Responsibility for the school following the change

3. The school would be run by trustees who would have to be newly constituted. The previous governing body could not assume this function because it was constituted for a different type of school although some of its members could become trustees. Given that the LEA would have a continuing financial responsibility to assist the school, it could reasonably expect to have some representation amongst the trustees. The LEA representation on the governing body of a voluntary aided school is perhaps a useful model here.

4. The school premises would transfer either to the ownership or tenancy of the trustees. In the case of county schools the trustees would either have to purchase the school from the LEA or pay an economic rent. The Local Authority would face difficulties

from its auditors if it sought to lease the building at a less than economic rent; if the legislation were to empower it to do so, its loss by way of economic rent would still have to be included in the calculation to ensure that the financial benefits to the LEA were no less than would have arisen from outright closure.

5. In the case of voluntary schools (over 60% of schools with less than 60 pupils are voluntary aided or voluntary controlled Church of England schools) the school that closes reverts usually to the ownership of its present trustees; these are most commonly the Diocesan Education Authority. If the current trustees wished to take advantage of the scheme there would be no problem; but if not, in order to override the existing trustees' present rights to make use of their real property at their discretion once it is no longer required for a voluntary school, the existing trustees would have to be required to make the premises available to the new trustees at an economic rent or price. It is for consideration whether in the former case the trustees should be eligible for grant from the Secretary of State towards the cost of repairs and adaptations to the external fabric of the school.

6. Provision would need to be made for any property so gained by new trustees either to revert to its previous owners, or to continue in use for educational purposes, on the trustees' closing their school, to prevent abuse of the scheme by way of property speculation.

7. Difficulties might arise in the case of those voluntary schools whose charitable trusts require that the schools' premises are used to provide education free of charge to the children of one or more parishes, since this would affect the amount of fee income available to the school.

Financial Viability

8. The general requirement placed on the new trustees either to purchase the premises from, or pay an economic rent for them to, their previous owners means that the proposers would have to be able to demonstrate that they could raise the necessary money or the rental required. They would also need to demonstrate that their annual income would be likely to be sufficient, taking account of the LEA's contribution, to meet the running costs of the school and to provide an acceptable standard of education.

9. The principle that the LEA should not lose the savings from closure is best given effect by requiring the LEA to pay to the proposers the full cost which it would incur if it, not the proposers, were to educate elsewhere the pupils registered at the school. It would be for the LEA to determine what this cost was in consultation with the proposers, and subject to appeal by the proposers to the Secretary of State.

10. Provision would have to be made for annual review of the financial assistance made by the LEA to ensure that the overriding

condition that there should be no financial loss to the LEA compared to the alternative of closure continued to be met. This would mean that the level of financial support from the LEA - and consequently the fees that the trustees would need to charge - could fluctuate markedly from year to year.

Fee remission arrangements

11. Since the LEA's financial contribution would be fixed by the criterion set out in paragraph 8 above, it would be illogical for the LEA to finance any fee remission arrangements. As with other independent schools this would be properly a matter for the internal financial management of the institution by the trustees.

Maintaining educational standards

12. As independent schools, the schools would be required to seek provisional registration. Subsequently they would be subject to the normal requirements for independent schools for inspection by HMI leading to formal registration. If a significant proportion of the 100 or so primary schools currently proposed for closure each year were involved in alternative arrangements of this kind, the additional workload on the Inspectorate could be considerable.

13. Since it is desired that the trustees of such schools should be required to meet the minimum educational standards expected of maintained schools - a different requirement than that imposed on the proprietors of independent schools - the requirement would have to be laid down in legislation. The primary responsibility for monitoring compliance with the requirements might rest with the LEA because of its continued financial assistance, but, since the ultimate sanction against non-compliance - removing the school from the register - would rest with the Secretary of State, he would also have some responsibility for monitoring its standards.

14. Many of the schools involved in such alternative arrangements would almost by definition be very small. Even when such schools in the maintained sector benefit from assistance by the LEA's advisory service and from co-operation with neighbouring schools, it is difficult for them to provide an adequate curriculum and the teachers are often professionally isolated. Recognising these difficulties the Department has recently initiated pilot projects supported by specific grant to identify cost-effective ways of enriching the curriculum of, and improving professional support for, rural schools. One- or two- teacher schools in the independent sector would find it more difficult to overcome these problems unless they were able to negotiate (and pay for) some advisory help from the LEA and in-service training for their teachers.

The Secretary of State's role in deciding the proposals

15. As with all statutory proposals the Secretary of State would decide proposals of this kind on their individual merits taking

account of the financial and educational case put forward by the proposers. He would, however, also have to consider the effects of the proposed new arrangements on other schools in the area.

An arrangement which works to the advantage of one village should not be to the detriment of another.

Timescale of the procedures

16. The procedures to be gone through by the proposers both on their own and with the LEA (and the voluntary body in the case of a voluntary school) would be complicated and time-consuming.

This would be manageable if the LEA (and the voluntary body) and the proposers were united in promoting the scheme. But if they were not, delays and difficulties would be likely to be substantial.

MODEL 2

17. On this model, local education authorities would be encouraged (by means of a Circular) to submit details of the assistance they proposed to give to the new independent school on closure of their maintained school. The Secretary of State would take these into account in weighing up whether the closure proposal itself was justified.

LEAs' powers to assist

18. Existing legislation offers LEAs substantial powers to assist independent schools, or pupils attending them, albeit in ways prescribed according to circumstances. Under Section 81(b) of the Education Act 1944, and the subordinate Regulations, LEAs are empowered to pay the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable; the provision is concerned with the prevention of hardship, and therefore presupposes a means test. Section 9(1) of the Education Act 1944 empowers LEAs to assist independent schools where this is necessary to secure a sufficient availability overall of school places. Section 6 of the Education (Miscellaneous Provisions) Act 1953 empowers them to pay full fees to direct grant schools, or where there is a shortage of places in maintained schools within a reasonably convenient distance (or where this offers the most expedient provision for a child with special needs). More generally, under Section 111 of the Local Government Act 1972 local authorities have the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions. The annex to this Appendix describes these legislative provisions in more detail.

Responsibilities of proprietors

19. It would not be necessary, as it would under Model 1, to legislate so that the LEA had a right of membership on the school's governing body. As with Model 1, however, the school would need

to be run by trustees (or other body of organisers) who would presumably be newly constituted; and they would have either to purchase or rent the school premises from the LEA or the existing trustees (in the case of voluntary schools) at an economic price, with the same considerations applying as to reverter provisions, conditions of use, financial viability etc.

Standards of provision

20. Here too, the proprietors would have to apply for the school's registration as an independent school, but on this model, whilst they would have to satisfy the Secretary of State that the necessary conditions for final registration were met, it would not be necessary to meet the rather higher standards required of maintained schools. Responsibility for monitoring standards would fall primarily on the Secretary of State.

Timescale of procedures

21. The procedures to be gone through by the trustees and governors of the new independent school, both on their own and with the LEA (and the voluntary body in the case of a voluntary school), would still be complicated and time-consuming, though less so than with the earlier No 10's proposal because in the present proposal the LEA would be a willing partner in any schemes which were introduced locally.

MODEL 3

23. On this model, local education authorities would be encouraged both administratively (by means of a Circular) and financially (by means of Education Support Grant, or something similar) to submit details of proposed assistance to the new independent school along with their proposals to close their maintained school. The Secretary of State would take the plans for the new school into account in deciding on the fate of the old, but the decision to allow the closure of the maintained school could not bind him to give ESG in support of the new one (since the total of ESG cannot be open-ended). The ESG would be intended purely as a pump-priming device, so there would not be any question of extending its availability to schemes under which LEAs already assist successful schools.

Statutory background

24. The LEA's powers to assist would be as set out in paragraph 18 above. As to the Secretary of State's power to pay grant through the LEA to the school, the only power which might be available to him to make such grants is the Education (Grants and Awards) Act 1984 which empowers him to pay Education Support Grants (ESGs) to local education authorities in respect of expenditure "for or in connection with educational purposes which it appears to him that those authorities should be encouraged to incur in the interests of education in England and Wales". It is not certain whether payment of ESGs in support of this sort of venture would

survive challenge: it would need to be demonstrated that the objective of the grant was educational in nature (rather than social or political); it would be unclear what experimental purposes the scheme would serve from the point of view of the maintained system; and there is an intrinsic awkwardness about the Secretary of State spending money to support a school the ceasing of whose maintenance from public funds he has just approved on compelling grounds. Moreover, grant may only be paid to LEAs (although they may claim it in respect of grant to other bodies); it is limited to a maximum rate of 70% of approved expenditure; and there is a limit on the amount of expenditure which may be supported through ESGs in any one year. Primary legislation would be needed if more apt grant-making powers were desired.

Responsibilities of proprietors

25. These would be as set out for Model 2 in paragraph 19, with the rider that a greater degree of financial propriety and accountability would be required to be demonstrated by the newly constituted trustees/governors to justify the Secretary of State's pump-priming grant.

Standards of provision

26. To justify central government grant, the promoters of the school would need to be able to convince the Secretary of State that, on opening, its standards would be at least as high as those of a maintained school. The formal responsibility for monitoring and enforcing standards would rest with the Secretary of State, unless primary legislation were to provide otherwise.

Timescale of procedures

27. Because of the need to ensure ESG (or its equivalent) from the start of the new venture, and because such financial decisions have to be taken in the autumn before the financial year in question, there would have to be a timelag of at least two years between the LEA's first mooting the closure of their school and their achieving it. This might reduce their willingness to engage in such schemes.

STATUTORY PROVISIONS GOVERNING LEA ASSISTANCE TO INDEPENDENT SCHOOLS (OR THEIR PUPILS)

1. Under Section 111 of the Local Government Act 1972,

"Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions."

2. Under Section 9(1) of the Education Act 1944,

"for the purposes of fulfilling their duties under this Act, a local education authority shall have power ... to assist any such [ie primary or secondary] school which is not maintained by them."

(This appears to give a general power to assist independent schools in pursuance of the duty on LEAs to secure the availability of sufficient and efficient schools in their area. Arguably, though, if they had just ceased to maintain the school it would be deemed surplus to their overall requirement, and it is conceivable therefore that a hostile ratepayer could successfully challenge such an arrangement)

3. Under Section 81(b) of the Education Act 1944, and the subordinate Regulations, local education authorities are empowered -

"for the purpose of enabling pupils to take advantage without hardship to themselves or their parents ... to pay the whole or any part of the fees and expenses payable in respect of children attending schools at which fees are payable."

4. Under Section 6 of the Education (Miscellaneous Provisions) Act 1953, where -

"the pupil fills a place in the school which ... is one in respect of which grants are made by the Secretary of State for Education and Science under ... Section 100 of the principal Act"

or - "where the authority are satisfied that, by reason of a shortage of places in schools maintained by them and ... other local education authorities, being schools to which the pupil could be sent with reasonable convenience, education suitable to the age, ability and aptitude of the pupil ... cannot be provided except at a school not maintained by them or another local

education authority".

or - "where ... the authority are satisfied that the pupil has special educational needs, and that it is expedient in his interest that the required ... provision should be made for him at a school not maintained by them or another local education authority" -

"a local education authority shall have ... been to make arrangements for education for pupils at a school not maintained by them or another local education authority",

and where it does so, it shall

"pay the whole of the fees payable in respect of the education provided in pursuance of the arrangements".

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POLICY ISSUES

1. There are a number of important policy considerations which are common to all three models of the scheme, and some that are specific to particular versions.

General issues

2. A central question is whether the promotion of any such scheme could be seen to be compatible with the Secretary of State's policies on school size, teacher effectiveness, and the area-wide rationalisation of provision. There are policy as well as legal implications (cf para 24 of Appendix 1) in the Secretary of State's either encouraging or compelling the offering of continued public finance to a school whose disassociation from the maintained sector he has approved on powerful educational and financial grounds.

3. It is not certain either whether such a scheme is likely to be attractive to local people. Those wishing to mount a proposal would be undertaking a time-consuming, possibly expensive, and certainly risky venture. They would have to ascertain the likely level of support; to prepare a properly worked out financial case based on the likely level of demand; to undertake the legal procedures necessary to establish the trust; to negotiate with the LEA or voluntary body owning the school over the purchase or lease of the premises, and with the Authority over the level of financial assistance. Once the school was established, they would be responsible for ensuring that it met the minimum educational standards for a maintained school. Such a venture is likely to be attractive only where there are parents with some experience in legal and financial fields, or with the money to obtain the necessary expertise.

4. A scheme of this sort might be unwelcome to the voluntary bodies, particularly the Church of England, to the extent that it restricted their freedom to dispose of their own property. (This would be more of a difficulty under Model 1 than under the others, but in principle it applies to them all.) It would be likely to be unwelcome also to LEAs for the same reason, and also because of the extra administrative burden arising from the initial search for proposers, the possible establishment of the school, and its subsequent support and supervision.

Model 1

5. An important question is the likely level of fees and the arrangements of fee abatement. The full cost fee of £750 per annum in the No. 10 worked example would be a significant additional outgoing for a family with an income of £15,000, especially if it had more than one child at the school. The principle that there should be no financial loss to the LEA compared with closure means that in some cases the LEA contribution may prove considerably less than the example in the No. 10 paper, since the local and geographical circum-

stances may be quite different from those there assessed. The calculation in that paper took no account of rent or interest charges on the building. With an average cost of, say £800 per pupil and fee abatement, some parents could be required to pay over £1,000 per year. If the financial difficulties caused the initial parent support to diminish over time, the school could quickly become unviable financially since the LEA support would decline as pupil numbers fell and the required minimum standard of education would limit cost savings. In the example in the No. 10 paper, a reduction of 5 in the number of pupils would require a 30% increase in fee income.

6. LEA opposition would be likely to be intense, not only for the general reasons set out in paragraphs 2 and 4 above, but also, under this model, they would be likely vigorously to contest the principle of being obliged by central government to provide financial assistance to a school which, in discharging their responsibility for their area's pattern of schools, they had decided to close.

Model 2.

7. The principal issue specific to this version is whether, when powers apparently exist and are already made use of from time to time in response to market forces to political factors, much is to be gained by the sort of high-profile encouragement envisaged. LEAs, if already well-disposed to this sort of arrangement, should need little encouragement; but their goodwill, along with that of more hostile authorities, is likely to be eroded by the high-visibility promotion of such a venture in the context of considerations such as those in paragraphs 2 and 4 above.

Model 3

8. However, there would be much more substantial opposition from LEAs if the scheme were linked to an Education Support Grant (ESG). If ESGs were used, the total of relevant expenditure and Aggregate Exchequer Grant were not increased on that account, there would be strong criticism that money held back from Block Grant which would otherwise have been available for spending on other priorities was being used to encourage LEAs to support the independent sector. Even if Aggregate Exchequer Grant were increased, there would be likely to be vociferous opposition to its being used to support the independent sector whilst other pressing claims in the maintained sector remained unmet.

EDUCATION
General Policy

