



DEPARTMENT OF EDUCATION AND SCIENCE

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FROM THE SECRETARY OF STATE

Sir Patrick Mayhew QC MP
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CF
 Awaiting report of meeting
 MEA 12/4
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Dear Patrick.

Following Committee Stage of the Education Bill in the Lords last Tuesday when the amendments by Lady Cox and others to outlaw politicisation were discussed sympathetically and at length, the Government's business managers are anxious that we should avoid, if at all possible, what promises to be a humiliating defeat at Report Stage. They are also concerned more generally at the effect on business if the Government are not seen to respond to this evident wish of the House of Lords that some tangible measure be taken against the admitted evil of political indoctrination in schools. I have therefore undertaken to the Lord President that I will look again as positively as I can at the possibility of a Government amendment which would satisfy the House while causing the least damage.

I take very seriously what you said in your letter of 3 April, supported in Quintin Hailsham's letter of 15 April, about the principal legal objection to any amendment that is likely to be acceptable to the Lords: that it would make justiciable in the courts issues which are incapable of being clearly defined objectively. I recognise the difficulties in requiring the courts, and indeed the holder of my office, to adjudicate on the meaning of ill-defined terms like "politically controversial" or "politically partisan" in their application to highly contentious cases. I also fear that, by putting too much emphasis on balance and impartiality, we could inadvertently legislate against those teachers who seek to support in the classroom some of the sound principles that sustain our society.

However, I accept too that the Government cannot be seen to do nothing in the face of the views expressed in the House of Lords, and I have seen Alec Douglas Home's recent letter in this vein. I should therefore like to consider with the Lord Chancellor and you at a meeting which I understand has been arranged for Thursday, whether it is possible to find a least damaging legislative solution to our problem. As a starting point, I set out below 5 possible options, in some cases supported by the indicative - but by no means final - draft amendments by Parliamentary Counsel which I believe you have seen:

(A) A duty on LEAs, governors and heads to forbid indoctrination (Annex A)

An amendment along these lines would place a duty on local authorities and others to forbid the promotion of a political viewpoint unless it was a) one generally accepted by our society, or b) part of a balanced presentation. (Paragraph (2)(a), as drafted, does not yet succeed in describing the fundamental values we would seek to promote in schools.)

Arguments for: This amendment would place the duty where it belongs, consistent~~ly~~ with the division of responsibilities for the curriculum in clauses 16 to 18 of the Education Bill. The holder of my office would be in the background, but with a clear locus to intervene under sections 68(unreasonable action) and 99 (breach of duty) of the 1944 Act.

Arguments against: the amendment would, however, be likely to give rise to a considerable volume of complaints to the holder of my office, whose decisions would be subject to judicial review by the courts. This amendment is likely to result in the greatest involvement of the courts. Because of the difficulty of drafting the requirements for balance and the promotion of fundamental values, we could not be sure that the courts would not interpret it in a way that enabled extremists to secure that their views were presented in classrooms.

(B) A positive duty on LEAs and others to promote a responsible approach to political issues (Annex B)

Like A, this amendment would put a duty on LEAs and others to act responsibly when political views are put to pupils.

Arguments for: This amendment, like (A), would place the duty where it belongs; it acknowledges more clearly that it may not be the political view that is controversial, but the way in which the issues are presented. It emphasises the professional responsibility of the teacher. And, reflecting Lord Ritchie's proposed amendment, Alec Douglas Home's view in his letter, and the mood of the House last Tuesday, the duty is cast in positive terms.

Arguments against: Complaints, though possibly fewer, would still come to the holder of my office, whose decisions would be the subject of judicial review by the courts. This version does nothing to solve the fundamental objections to making this issue justiciable: the decisions of the courts on what constituted acting in a responsible manner could not be predicted with confidence.

(C) Giving the Secretary of State a power of direction without a corresponding duty on LEAs and others (Annex C)

This version would give the Secretary of State discretion to intervene if partisan political views are being promoted in a school. LEAs, governing bodies and headteachers would be under an obligation to avoid indoctrination only by implication.

Arguments for: the pressure on the holder of my office to intervene would be reduced, and his administrative decisions would be rather less open to challenge in the courts. Accountability for his decisions would primarily be to Parliament. This option thus reduces the legal objections to legislation.

Arguments against: This option materially increases the powers of the Secretary of State, and the new power would be with the holder of a political office whose views may not always be shared by those who now advocate legislation. The amendment does not put the duty with LEAs and schools, where it properly belongs.

(D) A general principle to secure political impartiality, to be observed by LEAs and others, analogous to Section 76 of the 1944 Education Act (No Annex)

A general principle could be drafted in terms similar to the duties imposed by options A or B above. LEAs, governing bodies and heads would be required to have regard to it alongside other relevant factors.

Arguments for: this might help to deal with the objections associated with any legislation in this area. By allowing other factors to be taken into account, LEAs would have a broader defence against complaints so that fewer cases would come before the Secretary of State and the courts.

Arguments against: Depending how it was framed and interpreted, this might prove to be either totally ineffectual (it might be possible, for example, to defend a teacher who was admittedly indoctrinating pupils by arguing that otherwise he was excellent at his job), or equivalent to a duty (in the sense that no sensible LEA, with due appreciation of its responsibilities, would have failed to act in accordance with the principle). If it was ineffectual it would not be acceptable to Lady Cox and others; and if it was equivalent to a duty, then options A or B would be better.

(E) A new body to receive complaints (Annex E)

A different kind of proposal, set out at Annex E, would be to establish a new body whose function would be to receive and investigate complaints of politicisation in schools.

Arguments for: This option would keep from the holder of a political office (my office) any power to decide on what will be seen as highly political issues, and it would greatly reduce the involvement of the courts. We would argue that this issue is too political in the hands of the courts or the Secretary of State, and that a special kind of independent tribunal set up for the purpose was required.

Arguments against: Setting up the body could be costly, and would involve a substantial amendment to the Bill. It might well be ineffective because of the difficulty of securing hard evidence, so that this extensive apparatus would not seem commensurate

with the problem. While having the virtue of removing responsibility for receiving complaints from the holder of my Office, and to a large extent from the courts (although they would still have a role in judicial review), ~~and~~ its own decisions would not be free from political controversy. The proposal risks creating a precedent because it could create demands for other kinds of parental complaints to be treated similarly.

All these options are very difficult, as is the option of not legislating. Subject to the views of colleagues, while Option E despite its difficulties should at least be considered, I would favour Option B.

I am sending copies of this letter to the Prime Minister, Willie Whitelaw, Quinton Hailsham, Bertie Denham, John Wakeham, John Biffen, Malcolm Rifkind, Nicholas Edwards, Tom King, John McGregor and Sir Robert Armstrong, and to Parliamentary Counsel whose help I gratefully acknowledge.

Lawson

King

EDUCATION BILL [H.L.]
AMENDMENT
TO BE MOVED IN COMMITTEE

Before Clause 37

Insert the following new Clause-

" .-(1) The local education authority by whom any county, voluntary or special school is maintained and the governing body and head teacher of any such school shall each take such steps as are reasonably practicable to prevent views of a politically controversial nature being promoted-

- (a) in the course of the teaching of any part of the secular curriculum of the school;
 - (b) through any materials-
 - (i) used in the course of that teaching; or
 - (ii) otherwise used or displayed at the school except in connection with the religious curriculum of the school; or
 - (c) in the course of, or in connection with, any extra-curricular activity provided or organised, by or on behalf of the school, for registered pupils at the school.
- (2) For the purposes of this section-

- (a) a view shall not be taken to be politically controversial if it would be reasonable for any teacher expressing it to believe that it was one which was held by the majority of the people of England and Wales; and
- (b) the expression of any politically controversial view (whether by any person or in the course of, or in connection with, any activity or through the use or display of any materials) shall not be taken to amount to the promotion of that view if all such steps as are reasonably practicable have been taken to secure that the pupils to whom it is expressed, or who are likely to be exposed to it, are given a balanced presentation of other views on the matter in a manner designed to enable them to form their own views.")

10/36

POLITICAL INDOCTRINATION

Draft new clause - fourth version

BEFORE CLAUSE 37

Insert the following new Clause-

("Duty to
secure
responsible
treatment
of political
issues.

. The local education authority by whom any county,
voluntary or special school is maintained, and the governing body
and head teacher of the school, shall take such steps as are
reasonably practicable to secure that where political issues are
brought to the attention of pupils while they are-

(a) at the school; or

(b) taking part in extra-curricular activities which are
provided or organised for registered pupils at the
school by or on behalf of the school;

those issues are dealt with in a responsible manner.")

EDUCATION BILL [H.L.]
AMENDMENT
TO BE MOVED IN COMMITTEE

Before Clause 37

Insert the following new Clause-

(1) Where the Secretary of State is satisfied, in relation to any county, voluntary or maintained special school, that views of a politically controversial nature have been promoted -

- (a) in the course of the teaching of any part of the secular curriculum of the school;
- (b) through any materials -
 - (i) used in the course of that teaching; or
 - (ii) otherwise used or displayed at the school except in connection with the religious curriculum of the school; or
- (c) in the course of, or in connection with, any extra-curricular activity provided or organised, by or on behalf of the school, for registered pupils at the school;

and that the pupils concerned have not been, and are unlikely to be, given a balanced presentation of the issues involved in a manner designed to enable them to form their own views, he may give such direction as he thinks appropriate with a view to securing that those controversial views are not so promoted.

A NEW BODY TO INVESTIGATE ALLEGATIONS OF POLITICISATION

Because of the difficulties associated with requiring the Secretary of State or the judiciary to determine whether LEAs, governing bodies and headteachers have allowed politicisation to take place, a new body specifically set up for the purpose might be thought advantageous. Such a body could not be purely advisory because then the recipient of the advice - presumably the Secretary of State - would be faced with the same dilemmas as with other approaches in acting on that advice. The body would therefore be some form of tribunal.

2. The function of the body could be to investigate parents' complaints that their children had been exposed to political views in a manner which was not responsible, and to issue reports with recommendations to LEAs, governing bodies and headteachers on what action to take. It would need powers to call for evidence (including probably the power to enter schools), to direct LEAs, governing bodies and headteachers, and its directions could be enforceable by mandamus. Its decisions would be subject to judicial review and possibly also to appeal, at least on a point of law, in the higher courts of the land.

3. Careful thought would need to be given to the potentially contentious issue of appointments to the body. They might be made by the Secretary of State or the Lord Chancellor, and an obligation to consult at least some of the education partners would be necessary. The body would presumably need permanent officers and inspectors to service it. And there would be many other details to be worked out.

