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PRIME MINISTER

SCHOOL TEACHERS' PAY NEGOTIATIONS IN ENGLAND AND WALES

1. Keith Joseph's minute to you of 13 May suggested an early consultation exercise on future negotiating arrangements for teachers' pay and other conditions of service.

2. I have now studied Keith's analysis and your and other colleagues' reactions to it, and I would welcome an early meeting of MISC 122 to consider my preliminary conclusions, which I summarise below.

- i. Burnham has reached the end of its useful life. The two sides have taken to doing their real negotiations elsewhere - the school teachers at ACAS and the further education lecturers at their National Joint Council. But so long as the Remuneration of Teachers Act 1965 (RTA) stays on the statute book, their agreements must be converted into settlements in the statutory Burnham Committees. These Committees can deal with pay only and their pay settlements bind me - I have no veto - to issue statutory instruments which in turn bind every local education authority throughout England and Wales to pay their teachers and lecturers accordingly.
- ii. I do not know how the ACAS exercise will go. We have a new leader of the local authority employers and the National Union of Teachers have got back into the talks. These two could, with assistance from the national Labour Party, get together and this increases the likelihood of a deal - high on cost and at best uncertain on conditions - negotiated through the ACAS process. But the ACAS process has now got a momentum of its own; expectations of a lasting solution have been raised; Sir John Wood, his two side men and ACAS itself have their reputations tied to an outcome which, like the Main Independent Committee of Inquiry in Scotland, addresses all the interconnected issues. All this will make more difficult a conventional negotiated fudge between some of the employers and some of the unions. The agreement which set up the ACAS talks gives Sir John Wood the task of writing a final independent report recommending how any outstanding problems should be resolved. It seems likely that we will get a Wood report in September/October at about the same time as the Main report. The evidence from the talks so far is that Sir John and his two side-men recognise the force of the Government's views on a structure which would differentiate in favour of better teachers and attract and retain those with skills in short supply and on the need for a better definition of contractual duties. The Wood report could come out quite close to what we've

been asking for in terms of structure and duties. However, it seems certain to ask us to foot a bill well in excess of £1,250 million over four years.

- iii. We are publicly committed to consider the conclusions of the ACAS talks and the Scottish inquiry in full. Assuming satisfactory conclusions, in terms of content if not cost, this means deciding how much we are prepared to add to the RSG settlement for 1986-87 and how much we are prepared to include in the 1987-88 RSG settlement. But the Wood conclusions will not constitute a settlement: unless and until we do something about the RTA, that will still have to be negotiated into place through the present discredited machinery with the real risk of a high pay increase and no associated improvement in other conditions. Even so, employers, unions and parents seem likely to make common cause, urging us to put up a fair contribution to the cost to bring about a settlement based on the Wood report. If we do not, there seem to be two possibilities:
- (i) "no settlement", intensive disruption at the start of the autumn school term, with public opinion solidly against us. Another winter of discontent in the schools. The recent court case strengthens the hand of employers since the judge decreed that "cover" was a professional obligation. I shall run this for all its worth, but how many Labour LEAs can we expect to be more robust in enforcing contracts?:
 - (ii) with public opinion supporting the Wood recommendations, the employers and the teachers would proceed to agree the pay part of the recommendations in Burnham, even though the authorities could not afford the cost. Under the RTA, I would then be required - I have no veto - to promulgate the new pay scales in a statutory document, and local authorities would be legally required to pay them. The present Labour leadership of the local authorities are unlikely to hold back from such action. They would say that we have refused to finance a fair result from a process which we ourselves welcomed and that this left them with no choice but to put the cost onto the rates in 1987-88. We would get the blame for these rate increases.
- iv. We must as a matter of urgency get ourselves out of a position where I can effectively be forced to implement such a costly and unacceptable outcome. I agree with the Chancellor of the Duchy of Lancaster that we should announce an expectation of repealing - and possibly replacing - the RTA. Future negotiating machinery is the subject of one of the four working parties set up by Sir John Wood. My officials are

in membership and are seeking to indicate what the Government will require of any new negotiating arrangement. I think that they should now widen the scope of discussion to bring in options not currently on the agenda. We need to do this sooner rather than later or we shall be criticised for not contributing as we ought to the ACAS process. I would like my officials to put in the attached paper, giving advance notice of it to Sir John Wood and Sir Pat Lowry. Then, having put the options on the agenda at the ACAS talks, I would like to issue a slightly fuller version of the paper to a wider audience as a Departmental consultation document. This is because the ACAS exercise is concerned only with primary and secondary teachers, and involves only the local education authorities, the school teacher unions and the Government. We need to bring in the further education interests, also covered by the RTA, and the churches, who employ many of the teachers even though they do not pay them.

- v. The draft paper is neutral as between the options. These are identified as:
- (a) simply repeal the RTA and leave it to the employers and unions to develop their own negotiating arrangements. The expectation must be that, as for their other employees, the local authorities would want to engage in free national collective bargaining but the paper notes that under this option there would be nothing to prevent local bargaining. This could take place quite independently or it could be that local education authorities would negotiate discretionary payments within a structure negotiated nationally - for example, premiums to attract and retain people with skills in short supply and heavy demand. The culture of local authority management, not to mention that of the unions, runs counter to this particular example of differentiation. If we seriously want to encourage educational objectives like this, which we will never get accepted through argument and persuasion, we need to be able to offer concrete encouragement from the centre by means of specific grant.
 - (b) amend the RTA so that the remit of the statutory negotiating committees is extended to cover both pay and other conditions. It will be possible to take the opportunity of amending legislation to get back to the position which held before July last year when the local authority employers abandoned the Concordat, namely a weighted vote in the management panel for my representatives, 15 out of 40 instead of our 2 out of 27, and a veto on the total sum offered. We have statutory pay and conditions committed

in Scotland already. They are hardly an advertisement for this model. If this option runs it seems necessary to indicate some way of getting out of the sort of deadlock experienced in Scotland throughout 1985. Maybe we should, but the draft does not as yet, float the idea of returning to unilateral access to arbitration subject to Parliamentary override.

- (c) replace the RTA with a new Act setting up a Standing Advisory Committee to hold a review every four or five years on the pay levels, pay structure, contractual duties and conditions of service of teachers and to make recommendations to employers, unions and Government. The Act would make the implementation and promulgation of the pay recommendations, through statutory instrument as now, run hand in hand with the conversion of the other recommendations into contractual obligations, possibly through Regulations requiring employers to incorporate specified terms in their contracts of employment with teachers. In the intervening years there would be annual cost of living collective bargaining. The legislation would need to include a power of Parliamentary override to enable Government to reject recommendations on grounds of excess cost.

This is a revamped cliff

- vi. If the paper is neutral, I am not. I strongly dislike the middle option. It seems to me a recipe for annual confrontation with all parties ranged against the Government for not providing enough money to pay teachers. It is a revamped Burnham. The beauty of straight repeal should be that the local authorities and teachers would be made wholly responsible for their own actions within the RSG constraints. However, we have seen over the past 18 months, local authorities fail to enforce contracts and manage robustly. If the employers continued to behave in that way and made pay settlements which failed to differentiate between teachers on grounds of effectiveness, responsibility and market value, the general public would still lay the blame for the outcome at the Government's door. We would not get "Better Schools". The third option is not the same sort of animal as the review bodies for doctors, dentists and so on which have given so much prominence to comparability and so little to affordability. The remit of the proposed Standing Advisory Committee would go well beyond pay. It would create a mechanism for tying pay to what the teachers are paid to do, and would leave the Government free to override excessively costly recommendations.

3. But, having said all this, the choice among the options does not have to be taken now. What matters is initiating the consultation so that we can prepare ourselves for action,

if it is needed, in the autumn. I judge that we should get the paper to the ACAS Working Party in early June. I think it would be sensible to talk this through and I would be grateful if a meeting of MISC 122 could be held early in June so that the paper can issue immediately afterwards, to be followed shortly by its conversion into a wider consultative document.

4. I am sending copies of this minute to members of MISC 122 and to Sir Robert Armstrong.

K.S.

DEPARTMENT OF EDUCATION AND SCIENCE

4 JUNE 1986

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FUTURE DETERMINATION OF TEACHERS' PAY AND OTHER CONDITIONS OF SERVICE

A PAPER TO THE ACAS WORKING PARTY ON NEGOTIATING MACHINERY BY THE DEPARTMENT OF EDUCATION AND SCIENCE

1. A common thread in criticism of the present arrangements has been that they separate pay from other conditions of service. Practical attempts to bridge this division are already evident in the growing role of the NJC for FE teachers and in the ACAS-assisted talks on school teachers. The Government believes that one feature of new, improved arrangements should be that pay and what teachers are paid for - their duties and other conditions of service - should be considered in the same forum as part of an integrated package. Beyond that, the Government believes that proposals for new negotiating arrangements should be judged according to whether they offer a reasonable prospect of bringing about an improvement on the existing arrangements. Any proposal designed to advance that prospect will need to take account of the following important facts and give due consideration to the issues which they raise for the arrangements for determining pay levels, pay structure, duties and other conditions of service:

- i. the importance of the pay bill for school teachers and further education lecturers, some £5,750 million in 1985/86, inclusive of national insurance and employers' superannuation contributions, as an element of local authorities' current expenditure and as a factor in the annual rate support grant settlements;
- ii. the statutory responsibilities of the Secretary of State for certain matters bearing directly on the employment of teachers - for example the provisions in the 1982 Teachers Regulations and the provisions in the Education Bill for in-service training and appraisal - and for promoting the quality of education generally as through the policies set out in the White Paper, "Better Schools", not least the section on "Teaching Quality";
- iii. the education service is a national service administered by local education authorities which, under the current arrangements, have all been under a statutory duty to pay teachers employed in maintained schools and further education establishments on the same pay scales;
- iv. teachers in schools and further education are represented on the two Burnham Committees by eleven unions with a diversity of aims and approaches - all now have their place on the Burnham Committees as a result of decisions made in accordance with the RTA by the Secretary of State;
- v. the education service has experienced considerable difficulty in recent years in breaking negotiating stalemates, avoiding disruption of the service, and resolving national pay disputes expeditiously.

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2. With these considerations in mind, the Government sees three broad options:

- A. non-statutory arrangements between employers and unions;
- B. new Committees established under statute;
- C. an independent Standing Advisory Committee established under statute to conduct periodic reviews of teachers' pay and other conditions of service.

Each broad option contains numerous detailed possibilities. The brief discussion below is confined to the general approach.

A: Non-Statutory Arrangements

3. The local authority employers have called for the repeal of the RTA with no new statute to replace it. The absence of any statutory provision would make it possible for individual authorities to negotiate their own pay and conditions agreements with their teachers. The Local Authority Associations' declared preference is for negotiating pay and conditions of service together in a new, voluntarily established forum for national collective bargaining. In FE there is already the foundation for such an arrangement in the NJC, which resembles those bodies in which pay and other conditions of service for other local government employees are discussed. But for school teachers substantially new arrangements would be needed. It is conceivable that even within a national bargaining system individual LEAs could be given discretion to make payments beyond the national rates designed to meet local recruitment or retention needs. In so far as these might correspond with the Government's educational objectives to attract and retain people of the right quality in key subject areas with teachers in short supply, such payments might be supported by some form of specific grant.

4. Those favouring this general approach will wish to express a preference on the possible variants. They may also wish to comment in particular on the reconciliation of such arrangements with the Government's contribution to financing teachers' pay through the Rate Support Grant and its commitment to teaching quality. To date the Professional Association of Teachers has been refused a place on CLEA/ST and the Association of Polytechnic Teachers has been refused a place on the NJC; both unions are represented on the respective Burnham Committees. Will these unions be represented on new non-statutory committees? And, what is there about new voluntary arrangements of this kind that will provide greater likelihood of satisfactory negotiated agreements?

B: New Committees Established Under Statute

5. A second possibility would be to establish new Committees under statute with a remit covering both pay and other conditions of service. Like the existing Committees, these might comprise representatives of the local authority associations, the teacher unions and the Secretary of State. The Committees might make recommendations to the Secretary of State encompassing conditions

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of service other than pay, with agreements on both pay and other conditions of service being promulgated by Statutory Instrument. The balance of representation and the place of the Secretary of State on the Committee would need to be considered. Until July 1985 the Secretary of State's representatives on the Burnham Committees had a weighted vote within the Management Panel and a veto on the total sum offered. It would be for consideration whether the weighted vote should be given a statutory basis.

6. Bodies covering both pay and other conditions of service for teachers were established in Scotland under statute in 1980. These bodies operate through free collective bargaining. The one dealing with school teachers has failed to function since 1984. The Government eventually stepped in to set up an independent inquiry into Scottish school teachers' pay and conditions in March 1986. It is not clear what would be achieved by simply extending the remit of statutory committees to cover conditions of service other than pay. Such machinery cannot of itself ensure integrated negotiations across both areas. And, again, what is it that new statutory arrangements along these lines would offer which would increase the likelihood of satisfactory negotiated agreements?

C: An Independent Standing Advisory Committee Established Under Statute

7. If voluntary collective bargaining has a poor record in producing satisfactory pay and conditions agreements and in avoiding harmful disputes, perhaps recourse might be had to systematic third party judgement. To an extent this was the conclusion reached through the 1985 school teacher negotiations when the ACAS Memorandum of Agreement was signed on 24 January this year. This approach might involve the repeal of the RTA and its replacement by a new Act setting up a Standing Advisory Committee to hold periodic reviews, say every four or five years, on the pay levels, pay structure, contractual duties and conditions of service of teachers. The Committee would make recommendations to employers, unions and the Secretary of State. Employers and unions could make such representations on those recommendations as they wished to the Secretary of State who would be responsible for their implementation and statutory promulgation, subject to a right to substitute the Government's own pay recommendations if those of the Committee were ruled out on grounds of national economic interest. The promulgation would take a form which would carry the pay and other recommendations through into the individual teachers' contracts of employment. In the years between the periodic reviews there would be a need for negotiations to make such annual pay adjustments as proved necessary. This might be done in statutory or non-statutory committees set up for the purpose, with the results, like those of the periodic reviews, given statutory promulgation.

8. This approach raises numerous questions. How would the membership, constitution and periodic terms of reference of such a Committee be determined? How would its recommendations be reflected in the financial provision made in the RSG and what provision would be made to give Government the power to override recommendations which it judged unacceptable on national economic grounds?

Teachers Pay: EDUCATION Pt 7.

