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PRIME MINISTER

FUTURE OF THE POLYTECHNICS

1. We are developing a range of new policies with which to seize the initiative across much of the education field. In higher education I am working to improve the morale of the universities while at the same time keeping up the pressure for relevance and effectiveness. But the polytechnics and other colleges now provide for over half the students in higher education. Most of these institutions are maintained by local authorities and my planning and funding decisions are taken on the advice of the local authority dominated National Advisory Body (NAB). This prevents us from taking the sort of lead in this sector of education which I believe is now required, for example helping some at least of the polytechnics to become national centres of excellence in vocational and technological areas.

2. My view is that we should transfer the polytechnics and some of the other mainly higher education colleges out of Local Government and fund them direct through a grants committee that would replace the NAB. The local authorities successfully resisted a comparable move in 1980-81, but the arguments on our side have since become much stronger. The polytechnics in particular are essentially national not local institutions and have come of age. The average polytechnic is now larger than the average university, they have developed a distinctive vocational role, they cater successfully for a wide range of students including especially those of middling ability, and they are gaining the respect of parents and employers. But they are becoming increasingly resentful of local authority control which too often involves petty interference in their management and on occasion, although evidence is hard to check, improper political intervention. Indeed many polytechnic directors themselves are asking to be taken out of the hands of local government. Through the NAB the local authorities collectively impede the concentration of resources and rationalisation of courses

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at national level that is required if we are to make best use of the money available.

3. The change I have in mind naturally raises a number of problems on which I have not yet taken a firm view, but none seem to me insurmountable. We should have to draw a line between the polytechnics and other major colleges - perhaps between 50 and 60 of them in total - and those colleges which only provide small amounts of higher education, often part-time and genuinely local in character, which should remain with Local Government. Decisions would be needed on how to plan and fund this residual local authority higher education. The grants committee, which would be responsible to Government primarily for planning and funding the new direct funded institutions, might have some part to play in this, although I am inclined to think we should leave as much of it as we can to the local authorities. It will be sensible if the new grants committee takes over the NAB's present responsibility for advising me on planning and funding the small voluntary college sector which, as you will remember, is mainly concerned with teacher training.

4. Legislation will be necessary because most polytechnics and local authority colleges are not incorporated and will have to be given a legal identity. Some local authorities will no doubt co-operate and others will accept the inevitable in bringing this about but others will almost certainly resist and are in a position to block incorporation and to refuse to transfer assets. The legislation will therefore need to give us reserve powers to bring these changes about. It would also cover the establishment of the grants committee and the composition and basis of government of the new corporate institutions. There is some risk that the legislation could prove hybrid but I shall want to tailor the proposals so far as possible to avoid that.

5. All this is set out more fully in the enclosed memorandum and annexes. If you support my general objective I would like to put it to colleagues before Christmas. Thereafter if the proposals,

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which relate to England only, are agreed, we would be in a position to announce our intentions, possibly in a White Paper, early in 1987. This could coincide with publication of Lord Croham's report on the future of the UGC which is likely to raise some issues that need treatment consistent with our handling of a grants committee for the polytechnics. Meanwhile I want to keep my thinking on the polytechnics confidential to avoid disruption in the NAB while it is engaged on this year's planning exercise.

K.B.

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Department of Education and Science

27 October 1986

P. C. C. C.

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FUTURE OF THE POLYTECHNICS AND OTHER HIGHER EDUCATION COLLEGES IN ENGLAND

1. The polytechnics and other colleges in the non-university or "public sector" of higher education (PSHE) take in about half the students in higher education (HE). The 29 polytechnics provide the bulk of PSHE. Most of their recurrent costs are met by local authorities from a pool whose amount is determined by the Secretary of State - £715 million in 1987-88 - and which is distributed between authorities on the advice of the National Advisory Body for Public Sector Higher Education (NAB).

Need for change

2. It is no longer appropriate for the polytechnics and larger colleges to be controlled by individual local authorities. Polytechnics on average cater for a larger number of students than universities; they offer all major subjects except medicine; their full-time students are recruited nationally rather than locally; and they are now widely seen as HE institutions with their own characteristics, distinct from and not inferior to universities. They cater by and large for students with moderate academic qualifications but the relative standards achieved are good.

3. There is moreover growing evidence that local authorities are acting in ways which are inimical to the cost-effective operation of higher education. A good many authorities impose detailed management controls which prevent polytechnics from operating as efficiently as they might. For example, institutions may have to refer minor staffing decisions to the local authority and be forced to buy supplies through the authority at greater cost than would be incurred by direct purchase. There are also persistent accounts of improper political influence on the internal affairs and functioning of the polytechnics.

4. The local authorities, and the NAB, also impede national planning and development of PSHE. The NAB's local authority members are opposed to the policy of concentrating resources on strong institutions and of rationalising the spread of courses in the interest of quality and economy. The number of young people will fall in the next few years but demand for highly qualified manpower should remain buoyant. Rationalisation and concentration will have to continue, but the polytechnics will also have to provide

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in new ways for a wider range of students than before if they are to meet the needs of industry and commerce.

5. These changes call for effective planning from the centre to reward success and enterprise in meeting new needs rather than a system which allows each local authority to protect its own. In particular the polytechnics should have the opportunity to build on their present strengths so that some of them at least become recognised leaders in particular vocational and technological areas. They should not compete with the universities in basic research or the most advanced levels of teaching, but develop applied research and teaching closely geared to the needs of industry, commerce and the professions.

6. The great majority of local authorities, particularly the metropolitan authorities with a major stake in HE, will fight to retain their polytechnics and colleges, arguing that their stake in HE is proper because of its local and regional dimension and denying the charge that their management is ineffective or harmful. The arguments were run in 1980-81 when the Government considered the same change. The local authority view then prevailed and the extent to which Local Government will again get a hearing from members of both Houses of Parliament should not be under-estimated. Five years on, however, the balance of argument has shifted. The polytechnics have greatly enhanced their standing, there is more evidence of inappropriate local authority interference and the NAB experiment has revealed the lack of will by local authorities to tackle hard planning issues. Support for a change from employers should be forthcoming particularly if their representation on polytechnic governing bodies can be strengthened. Most polytechnic directors, if not all their staff, will support it.

Scope of the reform

7. The polytechnics provide about two thirds of the places in the local authority HE sector. Some other maintained colleges provide considerable amounts of higher education and large numbers of others provide small amounts. A line has to be drawn somewhere between institutions to be transferred from Local Government and others to remain. It would clearly be nonsensical, as well as arousing needless local authority opposition, to remove large numbers of colleges simply because they offered some HE in amongst work of predominantly non-advanced character.

8. In drawing the line it may also be important to minimise the possibility that necessary legislation (see paragraph 13) will prove hybrid since education law recognises

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no separate classes of institution among maintained polytechnics and colleges. For this reason the dividing line between transferred and other institutions should so far as possible separate classes of institution with distinct characteristics such as size and proportion of HE. Annex A proposes accordingly transfer from Local Government to direct funding of:

- i. the 29 polytechnics and 3 near polytechnics;
- ii. 17 institutions engaged in initial training of teachers, which are mainly or entirely engaged in the provision of higher education;
- iii. possibly 3 other specialised institutions which have more than 90% higher education.

This removes 76% of local authority HE (84% of full-time and sandwich places) from Local Government. Much of what would remain with Local Government is tailored to local needs. That which is not local in character might wither in time but this would do no great harm since it could be more effectively and efficiently provided in mainly HE institutions.

Funding and Planning

9. The institutions to be transferred would need to receive direct from Central Government the amount of money they now get from local authorities through the pool. Allocations for capital expenditure would be made direct broadly in the same way as for universities. There might need to be a very small addition to the recurrent funding to cover the side effects of the change and a decision would be required on what if anything should be done to make good the loss of income from those local authorities who "top up" pool allocations from their own resources, to the extent of about 3% overall for the maintained polytechnics. Provision would need to be made to pay off the debt charges on the property transferred. The amounts involved overall would not be large and would in time be more than offset by securing a better grip on PSHE costs with diminished local authority influence on management, pay and planning.

10. The polytechnics' role is distinct from the universities and they are funded less generously. The central funding and planning mechanism should therefore be separate from the UGC, as well as being wholly different in character from the local authority

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dominated NAB which it would replace. The simplest arrangement would be to establish a single Polytechnics and Colleges Grants Committee (PCGC) on the lines of Annex B to cover the polytechnics and the other ex-local authority colleges defined in paragraph 7 above. It should also cover the present voluntary colleges which already receive direct grant from Central Government.

11. A PCGC will need strong industrial and commercial element with a chairman from industry and academic and other representation from each sector but weighted towards the polytechnics. All appointments would be by the Secretary of State. It would advise the Government on the needs of its sector and would allocate, or advise on the allocation of, funds to its institutions. The Secretary of State would issue guidance and would have defined powers of intervention which might, for example, include approval of courses as at present and the ability to earmark funding for particular sorts of purpose and institution.

12. Funding and control of the rump of HE remaining with local authorities outside the main scope of a PCGC presents more difficulty. The PCGC could have responsibility for all PSHE with additional funds to "purchase" it from local authority maintained colleges. Alternatively some or all of the higher education still provided outside the direct funded institutions, much of it part time, could be held properly local in character and be funded by the maintaining authority along with non-advanced further education. The first approach holds out the possibility of more effective overall planning although the PCGC might be tempted to give too much attention to the interests of smaller colleges; the second is likely to arouse less local authority opposition. There is no insuperable obstacle here but further analysis on the lines of Annex C is needed before a preferred solution is settled.

Legislation and Incorporation

13. Most of the institutions to be removed from Local Government do not already have and will therefore need independent legal status. Some maintaining authorities will almost certainly be unwilling to co-operate and will seek to block applications for incorporation. Legislation will therefore be required to give the Secretary of State powers to establish the institutions as corporate bodies. The legislation will also need to establish the composition and basis of government of the new corporate institutions. These might be set out in model form in a Circular, with powers for the Secretary of State to nominate first members of the new corporate bodies and to furnish them

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with governing instruments. Initial appointments will be a major undertaking, the main requirement being a shift from local authority dominance to a strong lay, particularly employer representation. Legislation and governance issues are discussed further at Annex D.

14. The new corporate institutions, together with the others within the ambit of the PCGC, will need a new mechanism to discharge their collective-employer capability, now given effect by the local authorities in a National Joint Council and in Burnham FE. This might develop from the Committee of Directors of Polytechnics, parallel to the manner in which the Committee of Vice-Chancellors and Principals has come to be a negotiating body for university staff.

Implementation

15. It should be possible to work up these proposals to underpin a White Paper early in 1987, setting out the Government's intentions in advance of legislation. The precise timing of a White Paper would need to be considered in relation to the Croham report on the future of the UGC. The most obvious course would be to publish it in parallel with Croham so that comments could be invited on both documents. If the Croham recommendations were attractive, the White Paper could also give the Government's preliminary reactions to them. It would probably need to say in any case that the Government intended to give consistent treatment to the UGC and a PCGC on certain fundamentals such as whether they were to be advisory or executive.

16. Meanwhile confidentiality is vital. A premature leak of similar proposals in 1980 contributed to their failure then. Announcement of these fresh proposals is likely to have a disruptive effect on the NAB. It is important to avoid this at least until the end of 1986 because the NAB is engaged on a major three-year planning exercise whose results feed into decisions on pool allocations for 1987/88. If the NAB were to cease functioning when the proposals became known there would be temporary manpower consequences for the Department although the extra numbers needed would be substantially less than the 30 or so employed by NAB.

17. There are no direct consequences for Scotland and Wales. In Scotland the central institutions, broadly the equivalent of the polytechnics, are already funded directly by Central Government. The Polytechnic of Wales is a maintained institution but separate arrangements would be needed for parallel change in its status.

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Annexes

- A Selection of Institutions for Direct Funding
- B Funding and Planning : Institutions (i) Directly Funded and (ii) left with Local Government
- C Legislative and Governance Implications

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ANNEX A

SELECTION OF INSTITUTIONS FOR DIRECT FUNDING

Maintained Institutions

1. Legislation (see Annex C) would give the Secretary of State powers to re-establish selected maintained institutions as corporate status institutions, to be funded directly by Central Government. The selection of these institutions needs to be guided by clear criteria, if it is to avoid appearing arbitrary and to minimize the risk that the implementing legislation would be classified as hybrid.
2. The following basic criteria are suggested:
 - a. no institution should be taken from LEA control which is engaged in AFE* as to, and would therefore be eligible for direct funding for less than, 50% of its activity;
 - b. the number of institutions to be taken away from LEA control should be kept to the minimum consistent with providing the new Central (planning) Body (see Annex B) with sufficient leverage over the system as a whole.
3. A possible list of institutions, consistent with a. and b. above, might comprise:-
 - i. the existing 24 polytechnics which are maintained by LEAs. The remaining 5 polytechnics (those in ILEA) already have corporate status.
 - ii. 13 initial teacher training institutions which are maintained by LEAs and which are engaged in AFE as to more than 50% of their activity. A further 4 such institutions already have corporate status (Derbyshire CHE, West London IHE (Hounslow), West Sussex IHE and the Central School of Speech and Drama (ILEA)).

*Advanced Further Education (AFE) is synonymous with Local Authority Higher Education and is the appropriate legal term used in this Annex.

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iii. 3 other near polytechnics which are maintained by LEAs (Humberside CHE, Ealing CHE and Dorset IHE).

4. The above list could be covered for the purposes of legislation by a comprehensive definition as follows:-

"Institutions with more than 50% AFE and either

- i. at least 2000 full-time equivalent AFE students and at least one full-time or sandwich degree course or
- ii. students taking at least one full-time or sandwich course of pre-service teacher training to prepare them for FE and/or school-teaching".

LEA-assisted institutions

5. The legislation might allow the new Central Body, subject to the Secretary of State's approval, to accede to a request from other institutions to take over their planning and funding. This would enable institutions which already have corporate status but receive their funds at present from LEAs to be brought into the directly funded group. In addition to the 5 ILEA polytechnics and the 4 teacher training institutions referred to at 4 ii. above, there are three such institutions which are engaged as to more than 50% in the provision of AFE (Camborne School of Mines, Rose Bruford College of Drama and Dartington College of Arts). It would be for later consideration whether these institutions should be brought into the directly funded group.

Outcome

6. On the basis of paras 4-5 above 40 institutions would be re-established with corporate status. Including all 12 institutions which already have corporate status and which are referred to in para 5 above, a maximum of 52 institutions which at present receive their funding from LEAs would be transferred to direct funding and come within the ambit of a new Central Body (see Appendix A for list).

7. The result would be to transfer to direct funding 84% of (at present) local authority full-time and sandwich AFE and 51% of local authority part-time AFE (overall some 76% of local authority AFE). Almost all postgraduate and higher degree work would be within the directly funded institutions while only a handful of first degree courses would be provided by other institutions.

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Appendix to ANNEX A

LEA INSTITUTIONS TO BE DIRECTLY FUNDED

	(% AFE)*	FTS	PT	Total
<u>Maintained Institutions</u> (40)		127,259	21,360	148,619
(i) Existing Polytechnics** (24)				
(ii) <u>Initial Teacher Training Institutions with >50% AFE</u> (13)				
Bolton IHE	(90%)	1,430	591	2,021
Essex IHE	(78%)	1,164	1,093	2,257
Garnett (ILEA)	(100%)	405	252	657
Bulmershe (Berks)	(100%)	975	178	1,153
Bath (Avon)	(93%)	1,169	8	1,177
Rolle (Devon)	(100%)	618	134	752
Worcester	(100%)	1,083	62	1,145
Nene (Northants)	(61%)	1,417	445	1,862
Crewe and Alsager (Cheshire)	(96%)	1,925	154	2,079
Edge Hill (Lancashire)	(100%)	1,451	176	1,627
Charlotte Mason (Cumbria)	(100%)	395	77	472
Bretton Hall (Wakefield)	(98%)	783	125	908
North Riding (N Yorks)	(100%)	423	109	532
		13,238	3,404	16,642
(iii) <u>Other near-Polytechnics</u> (3)				
Humberside CHE	(88%)	2,372	1,070	3,442
Ealing CHE	(79%)	2,232	433	2,665
Dorset IHE	(96%)	1,728	702	2,430
		6,332	2,205	8,537
<u>Total Maintained</u>		146,829	26,969	173,798

* % of full-time equivalent numbers

**assuming mergers of Herts CHE with Hatfield and West Midlands CHE with Wolverhampton

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	(% AFE)	FTS	PT	Total
<u>LEA-Assisted Institutions</u> (12)				
(i) Existing Polytechnics (5)		18,770	5,341	24,111
(ii) Initial Teacher Training Institutions with > 50% AFE (4)				
Derbyshire CHE	(83%)	1,934	593	2,527
West London IHE (Hounslow)	(94%)	1,517	395	1,912
Central School for Speech and Drama (ILEA)	(76%)	256	-	256
West Sussex IHE	(99%)	1,132	119	1,251
		4,839	1,107	5,946
(iii) Other Institutions with > 50% AFE (3)				
Rose Bruford (Bexley)	(100%)	168	-	168
Camborne (Cornwall)	(100%)	279	-	279
Dartington (Devon)	(92%)	274	-	274
		721	-	721
<u>Total LEA-assisted</u>		24,330	6,448	30,778

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FUNDING AND PLANNING : INSTITUTIONS DIRECTLY FUNDED AND LEFT
WITH LOCAL GOVERNMENT

(i) Directly Funded Institutions

1. Central management of the polytechnics and other direct-funded colleges would move from NAB to a Body of quite different character. The closest existing analogy is the UGC, itself under review by the Croham Committee. Their report is likely to recommend that the UGC should not only be re-shaped but should be given a clear constitutional status separate from DES. There will be an expectation of reasonable consistency in the Government's treatment of the UGC and of what is set up for public sector higher education; both might indeed feature in the same legislation.

2. In theory there might be more than one central Body for PSHE, to reflect the varying interests of the polytechnics, the other directly funded institutions transferred from Local Government and the voluntary colleges. In practice the importance of simplicity and need for a strong planning focus leads clearly to a single public sector central body, perhaps called the Polytechnics and Colleges Grants Committee (PCGC). It would be responsible for: advice to the Secretary of State on the "needs" of its sector; allocation of funds to institutions within its direct tutelage; planning of its sector; pursuit of collaboration with other bodies, notably the UGC. Other functions might be: exercise of course approval as now by the Secretary of State under the Schools and Further Education Regulations; purchase of educational provision from colleges not within their direct tutelage.

3. A PCGC might comprise

A Chairman from industry

Five others from industry and commerce

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Four senior academics from the sector, two of them from polytechnics

Two from the local authorities

One from the churches

One from the university sector

All appointments would be by the Secretary of State. It does not have to follow that, if the UGC were given a charter, the PCGC should have one too. The neatest arrangement might be to make both statutory bodies. Another possibility for the PCGC is for it to be, as NAB today, a company limited by guarantee. This need not be settled early, although it will be well in any White Paper to give an indication of what the Government foresees.

(ii) Institutions left with Local Government

4. The HE left with local government will, for the most part, continue to be needed. Under the proposals in Annex A, the proportion of different categories not transferred to the new sector will be: first-degree work 9%, part-time first-degree work 10%, full-time sub-degree (ie HND) 37%, part-time sub-degree 61%.

5. Funding could be either through the normal local government mechanisms or through the PCGC or partly through each. This decision should be influenced by the purposes which elements of this HE principally serve. At the extremes, full-time first-degree work is likely to be of at least regional significance, whereas most part-time sub-degree work is wholly local. This seems to argue that funding responsibility, and the associated leverage over what is provided, should rest essentially with the maintaining local authority for the latter and with the PCGC for the former; with read-through from this starting point to the intermediate categories of part-time degree work and full-time sub-degree.

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6. The details of such a regime need further study, with eventual decisions on the precise amount of funding to be transferred to the PCGC, additional to that for its main purpose (as above), for the purchase of certain types of HE from local authority institutions. Also still for consideration is whether the existing powers vested in the Secretary of State to approve and disapprove provision of courses should be continued; if so, precisely how they should be operated. Work on these matters is already in hand.

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LEGISLATIVE AND GOVERNANCE IMPLICATIONS

1. The Secretary of State's policy objectives are taken to be:
 - a. to remove the polytechnics and certain other major institutions of higher education from local authority control;
 - b. to enable the Secretary of State to fund these institutions directly through an executive body - a Polytechnics and Colleges Grants Committee (PCGC) - which would distribute grants and carry out a central planning function;
 - c. to enable the institutions to conduct their affairs with a substantial measure of freedom from external control, but under a regime which ensures that they are responsive to national planning requirements and answerable to the Secretary of State for their conduct and use of public funds; and at the same time to maintain right of access by HMI.

2. The legislative requirements for meeting these objectives fall under 3 main headings which might correspond to substantive parts of a Bill. These include matters relating to:
 - I. the identification and constitution of the institutions to be directly funded;
 - II. the mechanism for funding them;
 - III. the Secretary of State's powers in relation to other matters.

I. THE INSTITUTIONS

3. The first requirement is that the institutions to be directly funded must have an independent legal identity. The 18 voluntary colleges and the 12 "assisted" establis-

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hments, which include the 5 ILEA polytechnics, already have legal identities. The remaining 40 institutions to be brought in are LEA maintained, and do not.

4. Existing models of incorporation are supplied by the universities - mostly incorporated by Royal Charter - and by the ILEA polytechnics - incorporated as companies limited by guarantee. Neither of these routes provides a ready solution here, since both are dependent on external initiative - a group of people wanting to petition for a charter or to establish a company - for the achievement of the policy objective. Such initiative cannot be assumed here. Once the Government's intentions are known, some LEAs may be prepared to cooperate in the establishment of their HE institutions as independent bodies; but many will not, and with their strength on the institutions' governing bodies they would be able to frustrate any such initiative. The Secretary of State will therefore need a power to establish as corporate bodies those institutions which are not incorporated already, a power he may exercise either on the application of a LEA or on his own initiative. The Bill will also need to provide the Secretary of State with powers to provide the new corporate bodies with constitutions and to modify the constitutions of existing corporate bodies taken into the new sector (see pages 8 and 9). All this could be achieved by instruments, under which the Secretary of State would establish each body and set out its constitution, which he had approved or imposed, based on a model promulgated administratively by a Circular.

5. The instruments establishing the new institutions would also need to provide them with power to make internal rules, corresponding to the articles of maintained colleges, subject to approval by the Secretary of State. The model constitution would thus need to provide guidance on the following, to be covered either in the instrument itself or the articles made under it:

- i. the objects of the body, its powers and duties;
- ii. the membership and principal officers of each new corporate body;
- iii. its governing structure;
- iv. composition of the governing bodies (eg the board of governors who might, but need not be, the same people as the members of the body);

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- v. the method of appointment, terms of office for the governing body and rules for the conduct of its business;
- vi. the composition of the academic board;
- vii. the division of responsibility for the exercise of powers and the management of the institution between members, governors, principal officers and academic boards;
- viii. such matters as finance, the appointment of and general conditions of service of staff, disciplinary procedures etc.

6. The Secretary of State will also need powers to approve (in the case of the willing) or to enforce (for the unwilling) the transfer of the local authorities' assets (lands, buildings etc) staff and other contractual rights and obligations from the LEA to the new corporate bodies. Questions such as the protection of pension rights will need to be dealt with in this context. Ministers will also need to decide whether LEAs are to be given an interest in the transferred property (should the new institution close, or shed accommodation at a future date); or perhaps whether they should be compensated directly for the expropriation of their assets (there are precedents, eg electricity and gas, for central government paying compensation to local authorities.)

7. Power to appoint the founder members of the institutions will also be required. The Secretary of State might appoint for each institution a small core of founder members who would make proposals to him for the first governors of the institutions. It is assumed that the subsequent appointment of governors should be made by the institutions themselves, in accordance with the formula laid down in their constitutions.

8. The above powers are needed for the LEA maintained institutions to be brought into the new regime. They are not needed in full for the existing voluntary and assisted institutions. The constitutions of the voluntary colleges may require no amendment, since they already receive grant directly from the Secretary of State. The constitutions of at least some assisted institutions, including all the ILEA polytechnics, will require

amendment at least to reflect the reduced role of the LEA. For example, the ILEA polytechnics have specific power to seek grant-aid only from that authority, which also has rights of consultation and approval over any proposed variation in their Memoranda and Articles and the by-laws and regulations made under them. Unless all the LEAs concerned with assisted institutions are prepared to allow the necessary changes to be made voluntarily, the Bill will need to include a power for the Secretary of State to amend the constitutions of these institutions.

9. Ministers will thus need to seek or impose amendment to the governing instruments of some but not all of the institutions which already have independent legal status and are to be included in the new funding regime. But for none of them will it be necessary to follow the prescription envisaged in paragraph 4 above, providing for entirely new constitutions. In practice Ministers may be content, subject to what is said in paragraph 14-16 below, to accept the minimum change required to governing instruments in order to meet the new circumstances. To go further, in order to bring them more closely into line with the proposed model for the newly incorporated institutions, would increase the difficulty of dealing with those already enjoying that status, and even more so with institutions subject to charitable trusts. Nevertheless, the power to amend to the extent judged necessary should be there.

Hybridity

10. Legislation is hybrid if it affects a particular interest in a manner different from the interests of other persons or bodies of the same category or class. A judgement as to whether this is so is taken by the House authorities. If legislation is judged to be hybrid, this involves additional standing orders and consumes more parliamentary time in both Houses. Such a bill is committed to a Select Committee part of whose function is to receive and consider petitions from people or bodies affected.

11. It appears that legislation which took away certain LEA maintained institutions from the totality of their FHE provision for inclusion in a new directly-funded sector might well be judged hybrid, since education law recognises no separate categories or classes within that totality. Advice from the Department's Legal Advisor is that the best prospect of avoiding hybridity is to identify classes of maintained institution which share specific characteristics. For the polytechnics and other institutions of higher education proposed in paragraph 3.i and iii. of Annex A these characteristics would be in terms of their size (ie full time equivalent student population) and the

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proportion of advanced level provision they offer; those in 3.ii. would be characterised by the extent of their commitment to initial teacher training and their proportion of advanced work.

12. No advice has yet been sought outside the Department as to whether the above provides a basis for avoiding hybridity. If, on enquiry, it transpired that it would not achieve that objective, Ministers might wish to pursue whether taking broad powers to transfer any FHE institution into the proposed new sector, specifying by Order those to be transferred, would do so. But even if it did serve the purpose, this course might well be politically unrealistic. At the end of the day, Ministers may be faced with accepting the challenge of taking through Parliament a hybrid Bill.

II. THE FUNDING MECHANISM

13. The Secretary of State already has power to grant-aid further education establishments which are not maintained by LEAs. There are, however, constraints on the extent to which the exercise of such power may be delegated to a third party. Statutory authority will therefore be required to establish the proposed Polytechnics and Colleges Grant Committee (PCGC) if it is to have executive, not just advisory functions; to enable the Secretary of State to appoint its first and subsequent members, define its powers and responsibilities, and to provide it with funds for onward transmission to the directly-funded institutions in the form of grant aid; and if appropriate to identify and meet the cost of higher education provision to be made by institutions remaining in the LEA sector. The PCGC would be empowered to pay grant to all those institutions newly established as corporate bodies under the Act and to such other institutions approved by the Secretary of State (ie those to be brought in which already possess a legal identity) as apply to receive grant. Provision should be for institutions to be eligible to receive funds only when the Secretary of State was satisfied with their governing instruments.

III SECRETARY OF STATE'S OTHER POWERS

14. The governing instruments of most institutions in the new sector will have been approved (or imposed) by the Secretary of State. It would be normal to provide for

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subsequent change in those instruments to be subject also to his approval. But unless specifically provided, the Secretary of State will have no power to initiate change in governing instruments; that power would rest with the governors of the directly-funded body.

15. It would seem appropriate to include in the Bill words which made governing instruments accessible also to change initiated by the Secretary of State. The lack of such provision has prevented Ministers from intervening effectively in problems arising from the balance of power between a governing body and a maintaining LEA, and whilst those particular problems would disappear in the new context others which cannot now be foreseen may well take their place. It is unreal to suppose that the initial framework for governance will necessarily remain good for all time and the Secretary of State would thus be justified in taking powers to initiate change if such action appeared necessary or desirable in the public interest.

16. The institutions to be transferred from Local Government, and to be given where necessary independent legal identity, are at present subject to inspection by Her Majesty's Inspectorate. It will be essential to ensure that the Secretary of State's right to cause inspections by HMI is maintained in the new more autonomous institutions.

17. Institutions in the new sector would enjoy a large measure of autonomy. They would nevertheless remain substantially dependent on public funds and there is a need for mechanisms to ensure that they conduct their affairs responsibly. At present LEA maintained institutions are subject to external checks: their behaviour can be scrutinised by the commissioners for local administration and the Secretary of State's powers under sections 67, 68 and 99 of the 1944 Act apply to them. None of these checks would operate for the new corporate institutions. It would therefore be appropriate for the Secretary of State also to take powers to intervene in the affairs of institutions when questions of improper or unfair conduct arise, and powers of direction.