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B/UP

C O N F I D E N T I A L

PERSONAL

PRIME MINISTER

SCHOOL TEACHERS' PAY AND CONDITIONS - LEGISLATION

1. At the MISC 122 meeting on Monday, I was asked to spell out the content of the proposed legislation.

FIRST BILL

2. This would be a very short, two clause Bill, with two Schedules. It would:

i. repeal the Remuneration of Teachers Act 1965; and

ii. require local education authorities to remunerate school teachers in maintained schools (a) from 1 April 1986 to [31 December 1986] in accordance with agreements made before [30 October 1986] in the Burnham Primary and Secondary Committee as set out in scales and allowances in Schedule A to the Bill and (b) from [1 January 1987] in accordance with Schedule B, uprating Schedule A's scales and allowances by [8.2%].

3. Three questions arise:

i. Should there be a fixed period of operation for the scales fixed from [1 January 1987]? I have concluded that no date of expiry should be included, lest for any reason successor scales should not come into place in time. That would leave a vacuum, with employers and unions thus able to frustrate our intentions by entering into free collective bargaining.

ii. Would it be better for me to take a power to determine the final 1986/87 pay settlement by Order? The specification of a percentage increase

on the face of the Bill will no doubt give rise to numerous amendments. However, were I to take the power finally to determine the 1986/87 settlement by Order, subject to negative resolution, I see more risk of successful challenge by judicial review. If I did not consult the unions and employers before making such an Order, and that is not our wish, they might be on strong ground in challenging my decision as unreasonable - on grounds of legitimate expectation. I would prefer therefore to specify the percentage increase in the Bill itself. Furthermore, that option is clearer and more readily understandable by the public - Parliament will have decided.

- iii. Is it necessary also to take a power to negate any agreements reached by the Burnham Primary and Secondary Committee between the date of announcement of legislation and enactment? I think not. The employers could well be tempted into an outrageous agreement in the knowledge that we would then have to use our power to overturn it. And during this short period I do not believe that the employers would make an agreement if the Government were to tell them, as we would, that the cost of any such agreement would fall entirely upon them.

4. It should be noted that this Bill would also abolish the Burnham FE Committee, leaving further education teachers' pay and conditions for negotiation between employers and unions subject to our financing constraints.

SECOND BILL

- 5. The second Bill would be more comprehensive. It would
 - i. empower the Secretary of State for Education and Science to set up an interim advisory committee to make recommendations for teachers' pay, duties and conditions of service;

- ii. provide for the committee to be set up for two years in the first instance, and provide for its existence to be extended, a year at a time, by order subject to negative resolution;

- iii. provide for the committee's terms of reference to be fixed from time to time by order, subject to negative resolution. The first such order, for the 1987 exercise would require it to make recommendations on teachers' pay levels and structure from [1 October 1987] within a predetermined cost envelope, being the balance of Main. Those recommendations should yield a distribution which would improve differentials and promotion prospects. The terms of reference would also require the committee to advise on teachers' duties, how those should be expressed in contracts and on such other conditions of service as are appropriate for national determination. The latter would include matters like the length of the teachers' contractual year and how much working time should be explicitly at the direction of the head teacher. The terms of reference for the subsequent exercise could be adjusted to require the committee to have regard to teacher compliance, with the duties and obligations imposed in 1987 and to employer enforcement of the resulting contracts.

- iv. require the Secretary of State to consult representatives of employers and teachers about the committee's recommendations and then to promulgate those by order, subject to the negative resolution procedure. The Secretary of State would have power to vary the recommendations subject to the affirmative resolution procedure.

C O N F I D E N T I A L

PERSONAL

SCOTLAND

6. The situation is different in Scotland. There the SJNC may fail to deliver the Main package on the phased basis proposed. In that event the Government would have to legislate. But the legislation would not be parallel. There is for Scotland a set of recommendations on pay and duties which the Government considers broadly satisfactory. There is no need for further advice in 1987. If the SJNC will not deliver the package by negotiation, then the legislation will have to impose it for the period to 31 March 1988 and provide for advisory machinery and determination powers for the Secretary of State for Scotland for 1988. Thus the timescales and content of legislation North and South will be different. The Secretary of State for Scotland accordingly believes that it will be better to look to a separate Bill for Scotland if the SJNC fails: I agree.

7. I am sending copies of this minute to other members of MISC 122, the Attorney General and to Sir Robert Armstrong.

KS

K B

28 October 1986

Department of Education and Science

