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Comments for Policy Unit
or other depts

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PRIME MINISTER

OPTING OUT OF ILEA: CONSULTATION DOCUMENT

I attach the draft of a consultation document on our proposals to allow inner London boroughs to opt out of ILEA. This follows closely the arrangements we have agreed in E(EP) and E(LF), but gives further details on a number of issues in particular the ground that will have to be covered in boroughs' applications to opt out. It has been seen in draft by officials in Departments with a close interest.

2. I should draw your attention particularly to two matters which we covered in earlier papers but on which the draft consultation document is silent -

- (i) The draft says nothing about payments for detriment where ILEA central staff take up posts in the boroughs at a lower salary level, or about redundancy compensation for those staff remaining with ILEA who will be surplus to requirements as a consequence of opting out. These questions are closely associated with that of a manpower control for ILEA, which we are to discuss in E(EP) early in September. Unless we have reached a view before the consultation paper issues on the way in which such payments might be financed, there is little to be gained by raising the subject in consultation.
- (ii) In our earlier consideration of the question of counter-obstruction I proposed that we might legislate to "fine" ILEA to the extent that it off-loaded surplus staff onto the opting out boroughs. John Major pointed out that there might be difficulties in applying such a "fine", and on reflection I have myself come to the conclusion that this is a sufficiently unlikely possibility for us not to need to provide against it in the Bill as introduced. It would be possible for us to reconsider this during the passage of the Bill if it appeared likely that ILEA were indeed unfairly loading the staffs of institutions in the opting out boroughs. It is not however a matter which the boroughs themselves see as a serious risk at present.

3. Paragraph 27 includes a passage in square brackets on community charge capping. I am very keen that we should say something on this, as it will be an important signal to the opting out boroughs and may indeed encourage some waverers to take the plunge. But what we say must clearly depend on where Nick Ridley has got to in formulating his proposals.

4. In order to allow a reasonable period for consultation, I must issue this document during the week beginning 7 September. I hope, therefore, that it will be possible to reach agreement on it in correspondence, although naturally if colleagues wish to discuss it early in September I shall be happy to do so. I should accordingly be very grateful if I could have any comments by not later than 4 September.

5. I am copying this minute to the other members of E(LF) and E(EP), to the Attorney General, and to Sir Robert Armstrong.

KS.

KB

Department of Education and Science

20 August 1987

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DRAFT CONSULTATION PAPER

THE ORGANISATION OF EDUCATION IN INNER LONDON

Introduction

1. The Government wants the education service to become more responsive to the requirements of parents and employers. Some of the Government's principal educational initiatives bear directly on this objective - the delegation of financial responsibility to schools, more open enrolment, the establishment of grant-maintained schools and of City Technology Colleges are all particularly relevant. The influence of parents on the governing bodies of schools, and the powers of governors, are being enhanced by the Education (No 2) Act 1986. In higher education, the Government's proposal to re-establish the polytechnics and certain colleges as corporate bodies has as one of its main objectives the freeing of these institutions so that they can respond more rapidly to changing requirements.

2. The Government believes that in inner London special considerations apply which make it necessary to go still further towards ensuring responsiveness to local needs. The special circumstances of London have long been recognised. It has been argued that educational provision in the metropolitan area should be managed as a whole, with the resources to make available a wide range of provision to pupils and students who frequently travel across borough boundaries to receive education. But the logic of that argument leads in the direction of very large local education authorities (LEAs) which inevitably find it difficult to keep in touch with and match the requirements and aspirations of different areas. So far as outer London is concerned, this problem was resolved in 1965, when the outer London boroughs became the LEAs for their areas. They have now been carrying out education functions for nearly a quarter of a century.

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It was argued that inner London's education had been planned and organised on a unitary basis since the 19th century and that individual inner London boroughs would be among the smallest LEAs in the country. Against this, there was severe criticism of the Inner London Education Authority (ILEA) on the grounds of its educational performance despite levels of expenditure far in excess of those of any other LEA in the country. The Local Government Act 1985 provided for the retention of a unitary authority. But the new ILEA has shown little sign that it is ready to tackle the root causes of its educational and financial problems.

4. The Government believes that the time has come to allow inner London boroughs the opportunity to demonstrate that they could provide an efficient education service within their areas. The forthcoming Education Bill will accordingly contain provisions designed to enable these boroughs to apply to become the LEAs for their areas. ILEA will continue to be the local education authority for the areas of those boroughs who do not choose to take advantage of this opportunity. The Government will of course continue to press ILEA to take the action necessary to improve its educational and financial performance.

5. This paper sets out the Government's proposals for the organisation of education in inner London. The comments of all interested parties are invited.

BROAD OUTLINE OF THE LEGISLATIVE PROPOSALS

Timing

6. Boroughs would be invited to apply to assume education functions from 1 April 1990. This will mean that transfer of responsibility would coincide with the proposed introduction of the community charge and the Unified Business Rate. By removing inner London's dependence on its present unevenly spread rate base, this will substantially remove the need for machinery to equalise London resources. The legislation would not allow boroughs which become LEAs to opt back into ILEA.

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Procedures For Opting Out

7. The legislation would provide that -
- (i) Inner London boroughs and the City of London would be able to apply to the Secretary of State to assume the education functions in relation to their area subject to a resolution to that effect by the full Council passed by a simple majority. It would be open to one or more boroughs to make a joint application proposing a joint education authority or joint education committee for their combined area.
 - (ii) The applications should be submitted by not later than 28 February 1989 and should be published and made available to the public.
 - (iii) It would be open to any interested party, including other local authorities, to submit objections to the application. These objections should be submitted to the Secretary of State within a period of one month after the receipt of the borough's application, and should be copied to the borough concerned.
 - (iv) The Secretary of State should, after consideration of the applications and any objections, be able to make provision by means of a statutory Order subject to the affirmative resolution procedure of both Houses of Parliament for the transfer of the functions of local education authority for its area to a borough (or boroughs - see (i) above) or the City of London from the ILEA. Such transfers would have effect from 1 April 1990. The Orders would provide for the establishment within the authorities concerned of "shadow" LEAs for an interim period - probably from 1 September 1989 - in which they would be able to make the necessary preparations

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- (v) The Secretary of State would provide by statutory Order - subject to the negative resolution procedure of both Houses of Parliament - for the transfer from ILEA to the new LEAs of land, buildings and related assets and liabilities (see paragraphs 17-20 below).
- (vi) ILEA would be placed under a duty to supply any information required by the Secretary of State or by the boroughs with respect to their application, to cooperate with the boroughs in the transitional period and to obtain the Secretary of State's consent before undertaking certain transactions.
- (vii) Sections 18 and 19 and Schedule 9 of the Local Government Act 1985 would be amended so that the period of office of ILEA members for opted out boroughs would terminate on 31 March 1990, the Inner London Education Area would be redefined to exclude those boroughs, and the number of members of ILEA would be adjusted accordingly. Section 22 of the Act, which empowers the Secretary of State to review ILEA by 31 March 1991, would be repealed.

8. The timetable set out above is designed to lead to a transfer of responsibility for education in April 1990. It would however be open to inner London boroughs to apply to assume responsibilities for education from a later date.

Provision of Services

9. In considering an application from an inner London borough, the Secretary of State would require a detailed explanation of the way in which the borough would propose to fulfil its statutory duties if it became an LEA. The Secretary of State would need to be satisfied that the borough would be able to provide appropriate education for all its pupils and students,

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including those with special educational needs, and that it would be able to provide inspectorial and other support services to meet its statutory duties and to maintain educational provision of a high standard. Boroughs would also need to show that they expect to make effective provision for the youth service, including appropriate support of voluntary organisations, and for a careers service. In some cases - perhaps particularly that of the careers service - authorities may wish to combine their own provision with co-operative arrangements with other LEAs. Where inner London boroughs would expect to inherit institutions of London-wide or regional significance, particularly in the case of further education or adult education, the Secretary of State would expect a commitment on the part of the borough to maintain such provision. He is mindful of the good record which LEAs - including small authorities - have in this respect.

10. As soon as possible after Royal Assent, guidance would be provided by Circular on the information which would be required from an inner London borough to support an application. This is likely to include -

- projected numbers of pupils and students, taking account of the flows of pupils and students in and out of the borough, set against the institutions available and their capacity;
- the property which the borough proposes to inherit for this purpose (see paragraph 18 below);
- policy on the organisation of nursery, primary, secondary and further education, including detailed proposals for the future of institutions offering provision of regional or national significance;
- policy on the school curriculum, including the borough's plans to secure effective arrangements for the progressive implementation of the national curriculum;

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- the borough's approach to arrangements in hand in its schools and colleges under the education support grant, in-service training grant, and other specific grant schemes;
- policy on special educational needs, and the way in which the borough would propose to implement this - including arrangements for access to the services of educational psychologists - with projected numbers set against the institutional framework envisaged;
- the organisation proposed for the adult education service, the careers service, the youth service, the school health service, the education welfare service;
- the structure envisaged for the local inspectorate;
- the administrative organisation proposed;
- the recruitment procedure for the education department's central services;
- proposals for the establishment of an education committee in accordance with the provisions of schedule I to the Education Act 1944;
- information about the borough's overall financial situation.

11. Under existing legislation parents are entitled to seek places for their children in schools outside the LEA in which they reside, and students may similarly apply to colleges outside their area. These provisions will naturally apply in the case of any inner London borough which becomes an LEA. The arrangements for recoument between LEAs will apply in London as elsewhere in respect of pupils and students attending schools and colleges outside their home LEA.

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The City of London

12. Like the other inner London authorities, the City of London would be eligible to apply to become the LEA for its area. The Secretary of State assumes that if the City chose to take advantage of this opportunity it would wish to make joint arrangements with another LEA; for example a neighbouring LEA might provide most services on its behalf. The Secretary of State will be prepared to enter into separate consultation with the City as necessary.

Staffing

13. The Orders referred to in paragraph 7(iv) above would provide for the block transfer to the new LEAs of the teaching staff linked to particular institutions in the boroughs concerned. This would mean that these staff would carry over their existing pay and conditions of employment. In the same way terms and conditions currently in force for lecturers in institutions of non-advanced further education would carry over to the new employers. Teachers not clearly linked to a particular institution, such as advisory and supply teachers or peripatetic teachers, would in general remain employed by ILEA, although it may be appropriate to provide for block transfer terms for those teachers the majority of whose work is at institutions in one of the new LEAs.

14. Certain categories of non-teaching staff, such as laboratory technicians and school secretaries, are clearly linked to particular institutions. It would be appropriate to provide block transfer terms for these staff. In other cases, such as school meals staff, it may be appropriate for the new LEAs to recruit directly to fill their staffing requirements. There may be further cases, for example some youth service workers, where it might be appropriate to provide for the transfer of groups of staff in designated services, as happened in some cases at the time of the abolition

of the GLC.

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15. It would not be appropriate to provide for block transfer terms for most of ILEA's central staff (administrators, inspectors and other groups of professionals such as educational psychologists). The boroughs would therefore for the most part recruit directly for these posts, enabling them to decide from the outset the size and structure of this part of their work force. The Government however believes that it would be right to require the boroughs, when making appointments within this category, to consider first applicants employed by ILEA. The boroughs would not be compelled to appoint such applicants in preference to those from elsewhere but this process should assist the reduction in ILEA's staffing which will be required as a consequence of a reduction in the scale of the authority's operation.

16. Under the Local Government Act 1985 the London and Metropolitan Government Staff Commission was set up to safeguard the interests of staff who would otherwise be made redundant by the abolition of the GLC and metropolitan counties. The Government's proposals to permit the transfer of education responsibilities will not lead to major staffing upheavals, but there will inevitably be issues arising which could best be dealt with by a similar Commission. The Commission might, for example, advise on the interfaces between block transfer, group transfer and individual recruitment by the opting out boroughs. Such a Commission would ensure that proper consideration was given to the interests of all the staff affected.

Transfer of Assets

17. The Government believes that the arrangements for transfer of land and buildings, together with the equipment located on or in them and associated rights or liabilities including related debt charges, should reflect where possible those that worked successfully in the case of the abolition of the GLC and the Metropolitan County Councils. The guiding principles for the transfer procedure should be continuity in the operation of educational establishments, clarity about where the title to

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rights or obligations in respect of the property transferred.

18. The basic rule in identifying the property to be transferred would be that all the ILEA property within the boundary of the opting out borough should transfer when that borough became an LEA. In putting forward its application for this purpose the borough would have a duty to provide a complete list of the property which it believed it should inherit, making use as necessary of powers to be included within the legislation which would require ILEA to make available any necessary information. There would however be exceptions to this basic rule, as follows -

- (i) Land or buildings which the new LEA did not propose to inherit would remain the property of ILEA.
- (ii) The Secretary of State would determine the ownership of any institution falling within the boundary of an opting out borough, but which was the subject of a request by ILEA - within the period of one month allowed for objections to the application (see paragraph 7(iii) above) - that it should not transfer to the borough.
- (iii) Where a borough could show that an ILEA establishment located outside inner London had provided regularly for a significant number of pupils or students resident in the borough, it would be open to it to argue that it should inherit that establishment in order to maintain a comprehensive service for its residents. This situation (like that described in (ii) above) could apply in the case of eg certain residential special schools. Determination of such cases would be a matter for the Secretary of State.
- (iv) In the case of an institution mainly based in an opting out borough but having some of its facilities located outside that borough, including for example

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- The guidance to potential applicants (paragraph 10 above) would invite them to attempt to agree a solution with their neighbours in putting forward their application.

- In the absence of agreement, the Secretary of State would in general be guided by the principle that institutions should remain as an entity, and that they should transfer to the predominant owner, using the occupation of the largest area of floor space as an initial criterion, but taking account also as appropriate of the intensity of use (measured by pupil or student numbers). The latter criterion might be particularly appropriate in determining the ownership of playing fields. The Secretary of State would however have the power not to leave an institution with the predominant owner, if an overriding case had been made out by another authority for an exception to be made.

- It would be open to the loser in any dispute to negotiate user rights in property located within its own boundaries or to which institutions located in its boundaries had traditionally had access. The relevant property Order might require the owner to make available such rights.

19. Fittings, furniture and equipment in both educational institutions and other premises would transfer with the property in or on which they were located.

20. ILEA would be required to vacate the relevant premises by 31 March 1990.

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Education Assets Board

21. The forthcoming legislation will contain provisions establishing an Education Assets Board (EAB) to facilitate the transfer of assets in the context of the Government's proposals for polytechnics and colleges and for grant-maintained schools. The process of transferring educational responsibilities from ILEA will require decisions about property transfer which are no less complex than those arising in the other two cases. The remit of the EAB would accordingly include advising the Secretary of State on aspects of property transfer in the case of ILEA, and as necessary supervising the arrangements involved.

Protecting the Interests of Opting Out Boroughs

22. The Government wishes to ensure that inner London boroughs taking on education responsibilities should inherit without serious encumbrance the assets which they need for effective operation. The Secretary of State accordingly announced in the House of Commons on 22 July 1987 that the forthcoming legislation would require ILEA to obtain his consent in advance to the following actions:

- any disposal of land or interests in land, including buildings, used or held or obtained for or in connection with the authority's education functions;
- any contract for a consideration having a value in excess of £15,000.

The requirement in relation to contracts does not apply in the case of the inner London polytechnics, which are subject to a regime being applied in the case of all the polytechnics and colleges which are to be re-established as freestanding corporate bodies.

23. In discussion with ILEA the Department of Education and

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Science has agreed arrangements for applying this regime which are designed to facilitate the effective day-to-day operations of the authority, while allowing the boroughs with a legitimate interest in particular transactions an opportunity to make their views known.

Other Government Policy Initiatives

24. The arrangements described in this paper will not affect the ability of schools' governing bodies to apply to the Secretary of State for grant-maintained status. Boroughs assuming education responsibilities in April 1990 will, like other LEAs, need to consider a scheme of financial delegation for the schools and further education institutions they will inherit. The Secretary of State will be prepared to receive representations from the boroughs on the questions of the timetable to which they should be required to work.

Financial Arrangements

25. From April 1990, a new system of local government finance will gradually be brought into operation. Instead of raising business rates specifically to finance spending in their own areas, every rating authority in England will levy a uniform business rate, the product of which will be distributed among authorities across the country according to their adult populations. In addition to a share of the national business rate, authorities will receive grant from the Exchequer so as to compensate for different levels of need and to contribute a fixed sum per person towards a standard level of service. The difference between this income and the expenditure of authorities in the area will be financed from the community charge together with domestic rates during the period 1990 to 1994.

26. Under this system, all inner London residents will benefit from central Government grant and a standard share of the national business rate in respect of education and other services. Local authorities in inner London will finance their total spending

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after taking account of this income, from the community charge. ILEA will continue under these new arrangements to issue a precept for budgeted spending to boroughs which remain within it. They will meet this precept from the sources of income described above, including the community charge.

[27. Under the new system, overspending on services will feed directly into the community charge. At ILEA's present levels of spending that would impose a considerable burden on community charge-payers in inner London. The Government is determined to use its power to limit rates and precepts to relieve the burden on inner London rate-payers over the next two years. It plans to phase in the charge over four years from 1990 so as to moderate the necessary changes in local spending and taxation. The Government is considering whether the new system should also include powers to limit rates, precepts and community charges to curb excessive local authority spending. It believes however that it would be unfair to impose such arrangements on boroughs which opt out of ILEA and which are not overspenders on other services. It therefore proposes that in the early stages of the transition an inner London boroughs which is not spending excessively on services other than education would not be designated under any selective scheme.]

28. If a borough is able to offer education more efficiently and effectively than does the remaining ILEA, it can pass the whole saving direct to its community charge payers. The Secretary of State is aware that several boroughs have announced their determination to provide a high quality education service at a realistic level of expenditure. He believes that the Government's proposals open the prospect of progress towards that objective.

Consultation

29. Comments are invited on the proposals set out in this document. They should be sent by 16 October to -

Mr P Cohen
Department of Education and Science
Room 2/51

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