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Prime Minister
This now looks acceptable.
Content?

PRIME MINISTER

OPTING OUT OF ILEA: CONSULTATION DOCUMENT

I am grateful for the comments recorded in the attachment to your Private Secretary's letter of 7 September, and for the comments from John Major and Nicholas Ridley (their letters of 2 and 7 September respectively). Tony Newton, in his letter of 25 August, also raised some points which are relevant to the consultation paper on ILEA.

We have amended the text in the light of your comments and those of other colleagues, and I attach a copy of the revised version, which I propose to issue this Friday, 11 September. Changes from the previous version are sidelined in the text. It may be helpful if I explain the reasons for the form taken by some of these.

You asked me to delete the second sentence of paragraph 8, which explained that it would be open to inner London boroughs to apply to assume responsibilities for education from a date later than April 1990. I share your wish to ensure that as many boroughs as possible take advantage of opting out at the earliest opportunity, and I am therefore content to remove the sentence. My paper to E(LF) in July (E(LF)(87)20) however made it clear that I envisaged that there could be subsequent tranches of applications to opt out, and there was I think no dissent from that suggestion. I believe that some Labour authorities may not wish to take the plunge at this stage, but might very well choose to do so once they saw that opting out had become a reality. Furthermore, some of our Conservative colleagues, at present in opposition on borough Councils, will hope to gain control in May 1990, and will certainly wish then to have the opportunity to bring their boroughs out also.

There is no doubt that, whether we make it clear in the text or not, we shall be asked whether April 1990 is the only date

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on which opting out will be possible. Subject to your views, I think that our line must continue to be that the legislation will not preclude applications to opt out at a later date.

I recognise the concern which E(EP) felt on the question of counter obstruction in relation both to moveable assets and to staff contracts. It is however not clear what action we could sensibly announce at this stage in relation to either category. My officials are continuing to give urgent attention to this question, but it would be premature to make a specific statement of our intention. I hope therefore that colleagues will accept that the sentence added to paragraph 23 is a sufficient marker for the purpose of the consultation paper. 22

Nick Ridley shared my view that in the absence of agreement about arrangements to support redundancy and detriment compensation to ILEA staff it would be preferable to remain silent on this point. You however agreed with John Major that it would be useful to confirm that existing compensation would be available. There is of course at present no provision for compensation for detriment. I recognise the value in providing reassurance to ILEA staff. It is however difficult to go far in this direction when we are as yet unable to answer questions about whether there will be any specific assistance and if so where the money will come from. The sentence added to paragraph 16 is as far as I believe we should go at present; in particular, it avoids any reference to detriment. It has been agreed at official level with the Treasury.

John Major raised again the question of the role of the Education Assets Board (EAB) during opting out. In the interest of issuing the consultation paper this week I am prepared, as he requests, to drop the reference to this which was contained in paragraph 21 of the previous draft. However, at a stage when we cannot foresee how many boroughs will in the event opt out, and the consequent scale of operation necessary to smooth the process, it seems to me undesirable to deprive ourselves from the outset of any possible recourse to a body which we are setting up specifically to assist with the kind

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of transactions that will arise. I have asked my officials to pursue this question in more detail with the Treasury.

John Major also picked up Tony Newton's point about generating resources from disposal of surplus assets. I shall be commenting further on this in the paper which I am preparing for E(EP) on the scope for manpower controls on ILEA.

I am copying this minute to other members of E(LF) and E(EP), to Patrick Mayhew and to Sir Robert Armstrong.

T. D. Jeffrey

p.p.

KB

(Approved by the Secretary of State
and signed in his absence)

10 September 1987

Department of Education and Science

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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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3. The position in inner London was long held to be different. 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. 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 for the transfer, including the transfer of staff, assets and liabilities.

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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.

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 recoupment 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 Secretary of State will also provide by Order 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 recruitments. 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 Greater

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London Council. The Government envisages that detailed consultation will be needed before precise boundaries can be drawn in the case of non-teaching staff.

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 applications from ILEA staff before making an appointment. 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 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. Existing terms for compensation would remain in force for staff made redundant as a consequence of the proposals in this paper.

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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 property lies, and neutrality with regard to third parties' 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

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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 cases where playing fields in one borough serve a school in another or in more than one borough, the following procedure would apply -
- 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 location of the largest area of floor space as an initial criterion, but taking account also as appropriate of the intensity of use of each site (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.

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- 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.

Protecting the Interests of Opting Out Boroughs

21. 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.

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22. In discussion with ILEA the Department of Education and 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. The Government's aim is to protect the interests of boroughs proposing to opt out and in operating these arrangements it will assess the possible need to take further measures should new circumstances arise.

Other Government Policy Initiatives

23. 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 question of the timetable to which they should be required to work.

Financial Arrangements

24. From April 1990, a new system of local government finance will be brought into operation. Instead of raising business rates 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 services. The difference

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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.

25. 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, 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. Boroughs which choose to remain in ILEA should not therefore be adversely affected, under these arrangements, as a result of the decisions of other boroughs to opt out, providing ILEA makes commensurate savings in its overheads costs.

26. 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 new system of local authority finance will include powers to limit precepts and community charges. The Government believes, however, that it would be unfair in the early years of the new arrangements if those boroughs which opt out of ILEA were to be designated under such powers simply on account of the cost of services inherited from ILEA where they were actively seeking to reduce expenditure. Its scheme for community charge limitation will take account of this.

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27. 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

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

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Department of Education and Science
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Elizabeth House
York Road
London
SE1 7PH

EDUCATION : UGA PTS

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PMM



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

11 September 1987

Dear Tom,

**OPTING OUT OF ILEA
CONSULTATION DOCUMENT**

The Prime Minister has seen your Secretary of State's minute of 10 September, to which was attached a revised consultation document about opting out of ILEA. The Prime Minister is now content that this should be published, subject to the views of colleagues.

I am copying this minute to the Private Secretaries to other members of E(LF) and E(EP), to the Private Secretary to Sir Patrick Mayhew and to Sir Robert Armstrong.

*Yours,
David*

(DAVID NORGROVE)

Tom Jeffrey, Esq.,
Department of Education and Science.

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