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CCBYP CCBG  
NOTE: Suggested Review that this should be taken at E(LF) Dec 22/9.

PRIME MINISTER

OPTING OUT OF ILEA: RESERVE POWERS

attached

1. In July E(LF) broadly endorsed my proposals for implementing our policy on opting out of ILEA (E(LF)(87) 11th Meeting Minutes). Only one aspect produced significant disagreement. The Sub-Committee took the view that my proposal to take a power to compel a borough which had not applied to become an LEA to submit plans for doing so could not be justified by the likely scale of the problem.

2. While I do not dissent from that general judgement, I do not believe that we can leave the legislation completely open-ended. The situation looks different if one considers what might happen if the majority of inner London boroughs successfully apply to opt out. I do not altogether discount the possibility that this could happen in 1990; but in any event, since we have made it clear that the offer will remain open, it is quite likely that by the mid-1990s we shall be faced with this situation. That is to be welcomed, but it does create its own difficulties.

3. In my view, we could not sensibly defend a situation in which ILEA lingered on with responsibility for a handful of, perhaps scattered, boroughs, particularly as it might well be picking up residual assets as a consequence of opting out. A very small and fragmented ILEA would certainly make no educational sense, and the direct election of its members would become increasingly hard to justify.

4. I believe therefore that the legislation must make reserve provision for ILEA to be broken up in the last resort. Without such a provision, we shall have no convincing answer in Parliament when our opponents ask us whether we are prepared to contemplate

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an ILEA with no more than, say, three, two or even one borough in membership. We should have to explain that we would be prepared to introduce fresh primary legislation if the situation arose. But that would be portrayed as a striking lack of confidence in the attractiveness of our proposals. Better, in my judgement, to tackle this problem head-on now, when it will add comparatively little to the opposition which the ILEA vested interests will mount in any case, than the probability of having to go over this ground yet again in a few years' time.

5. Nonetheless, I think we must signal that it is not our intention to force the break-up of ILEA on a majority of unwilling boroughs. It would in my judgement be right to take a reserve power which would be available to the Secretary of State only when ILEA shrinks to or below a certain size - five boroughs is probably the right level to choose. There would be no requirement to use this power, which would be exercisable under an Order subject to the affirmative resolution procedure, even at that stage. If the remaining ILEA offered a reasonable prospect of effective operation, it could remain in being. But if that were not the case, I consider it only prudent to be in a position to require the boroughs remaining within ILEA to be under a duty to submit plans for assuming LEA responsibilities.

6. On the assumption that the majority of boroughs will not opt out initially, ILEA can at first act in effect as its own residuary body in relation to staffing and property matters. But if ILEA as a whole is wound up - whether forcibly or as a consequence of the choice of each borough - it will be necessary to establish a separate residuary body to deal with the consequent problems arising from residual assets and to make arrangements for the staff who will not have been block transferred to the boroughs. I therefore propose that the power I have described above should be accompanied by a reserve power to establish and finance a residuary body for these purposes. The nature of the residuary body and the scale of its operation would of course depend on the size

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of ILEA at the time of its dissolution, and on the timing of that dissolution. It is in the nature of the case that that cannot be predicted. On the basis of boroughs' current statements, it looks unlikely that such a power would need to be triggered before the mid-1990s.

7. There would plainly need to be close consultation between Departments before the use of either of these reserve powers could be contemplated. But I believe that both are essential to the coherence of our proposals. I should therefore be glad to know whether you and other colleagues are content that we should include provisions along these lines in the Education Bill. In view of the deadlines to which we are working, it would be helpful if this matter could be agreed in correspondence. But if colleagues wish to discuss, I should of course be ready to do so.

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

KS.

KB

Department of Education and Science

18 September 1987

Education: ILEA PTS PT

Reference No P 02841

PRIME MINISTER

Opting Out of ILEA: Reserve Powers  
(Mr Baker's Minute to you of 18 September)

CONCLUSIONS

In his minute Mr Baker returns to the question whether the Education Bill should provide for the eventual winding up of ILEA. Specifically, he proposes:

- a. a reserve power to compel a borough which has not applied to become a Local Education Authority (LEA) to submit plans for becoming one this reserve power to be usable only when ILEA shrinks to 5 boroughs; and
- b. a reserve power to establish and finance a residuary body to be used if ILEA as a whole is wound up.

BACKGROUND

2. Mr Baker proposed a reserve power to direct boroughs to assume LEA responsibilities where he was satisfied there was no longer a continuing role for ILEA in a paper to E(LF) earlier this year (E(LF)(87)20). E(LF) decided on 2 July that this proposal could prove controversial and should not be pursued (E(LF)(87)11th Meeting). Mr Baker's minute to you of 18 September raises the issue once more. He has however modified his proposal so that the power can be used only when voluntary opting-out by boroughs has reduced the number of those remaining in ILEA to five.

ISSUES

Reserve Power to compel a borough to become an LEA

3. Mr Baker is likely to put forward the following arguments in favour of his proposal:



- a. it would be indefensible to allow ILEA to linger on if it was only responsible for a handful of boroughs, some of which could be scattered geographically;
- b. without it, the Government would have no convincing answer to questions about what would happen if ILEA shrank to an unmanageable size. It would look as though the Government had no confidence in the success of its own policies;
- c. dealing with this now will add little to the opposition which ILEA will mount against the Government's proposals in any event and will save the Government having to legislate again in a few years' time; and
- d. his modification of his earlier proposal will make it more acceptable. The new power cannot be used until the great majority of boroughs have already decided of their own accord to leave ILEA. There is no question of using it to force a break-up of ILEA.

4. The arguments against Mr Baker's proposal are:

- a. the Government's general line is that it is only giving boroughs freedom to decide for themselves whether to stay in ILEA. Any power of compulsion, even one to be used only when ILEA had almost disintegrated would look like Government intervention;
- b. the power will complicate the passage of the Bill (you might ask how long the necessary provisions would have to be). Moreover, the powers proposed by Mr Baker are not needed now, and will probably not be usable until the mid-1990s and may never be needed. So risks are being run now for a distant and uncertain gain;

c. he is exaggerating the difficulty which he is going to have answering questions in Parliament. Surely he could say that he expects all boroughs in due course to see the wisdom of opting out although if one or two were foolish enough to want to stay in ILEA, he would as a last resort ask Parliament for power to cater for them?

#### Reserve Power to establish a separate residuary body

5. Mr Baker also proposes a reserve power to establish a residuary body to deal with remaining assets and staff when ILEA is wound up, as the result either of the exercise of the new power already discussed, or of the choice of the boroughs.

6. The Sub-Committee's view on this may depend on its view of Mr Baker's main proposal. If it were to accept this, there would presumably be a case for legislating for the residuary body. If he takes power in effect to wind up ILEA, he also needs to take power to deal with the consequentials.

7. If however the Sub-Committee rejects the main proposal, the case for the residuary body seems much weaker. Mr Baker implies that the body will still be needed to deal with purely voluntary disintegration. You might explore this further. Would it be possible to set up a residuary body as long as ILEA exists at all, even with only one borough? If not, this proposal deals with an even more distant and uncertain possibility than the main one.

#### Views of other Departments

8. Other Departments have no strong views, but:

- DOE will brief Mr Ridley to support Mr Baker, but to suggest that plans for the boroughs to assume LEA responsibilities should be drawn up not by the boroughs, who might be unwilling, but by DES. Might not the assumption of this role by DES look like heavy-handed Government intervention?



- The Treasury will want to record that the costs of the residuary body should be met by the London boroughs, not by central Government. Mr Baker's minute is not clear on financing, but DES officials accept this.

**HANDLING**

9. These decisions are essentially a matter for political judgement. You will wish to invite the Secretary of State for Education and Science to present his proposals. The Lord President of the Council, the Lord Privy Seal and other Ministers may wish to comment on the political and legislative implications. The Environment Secretary and the Paymaster General may wish to comment on the proposal for reserve powers to establish a residuary body.

*RTJ*

R T J WILSON

Cabinet Office

25 September 1987





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