

F0245

Mr Wilson
through Mr Monger

EDUCATION BILL

I have read through the Education Bill and, in the attached note, suggest some points which seem to me, at first glance, at odds with what was agreed collectively or with the Prime Minister.

2. I have not covered Part II Chapter II (Clauses 82-95) which deals with higher education. DES are sending me copies of consultation papers which relate to this, and I will need to look at this part in the light of these. The Bill also covers (Chapter iv, Part iv, clauses 130-136) the question of academic tenure; I have not covered this in the attached note, but will try to track down where Mr Baker got policy approval (H?) and check its consistency with what was agreed.

3. Much as I would like to, I cannot pretend this is an exhaustive scrutiny of the Bill. The eyes tend to glaze over after 5 or 6 clauses. I therefore intend to return to the Bill when in need of light relief and will let you know whether and if I find any further discrepancies.

D P Walker

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27 November 1987

EDUCATION REFORM BILL1. Clause 2 (a) (Attainment Targets)

This Clause speaks of "securing that there is implemented... a basic curriculum for all registered pupils of compulsory school age (to be known as "the National Curriculum") which comprises the core and other foundation subjects and specifies in relation to each of them -

the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of each key stage (in this Chapter referred to as "attainment targets")".

This seems to me inconsistent with the Prime Minister's wish that there should be guidelines rather than attainment targets for art, music, and physical education. David Norgrove's letter of 6 November says: "the legislation should enable (the Education and Science Secretary) to issue guidelines rather than attainment targets for these subjects...".

2. Clause 3 (i)(b) et seq (Welsh)

This Clause says that Welsh will be a core subject in schools in Wales which are Welsh-speaking schools. Clause 3 (6) of the Bill says "a school in Wales is a Welsh-speaking school if subjects other than Welsh are taught (wholly or partly) in Welsh." Clause 3(2)(c) places Welsh as a foundation subject in schools in Wales which are not Welsh-speaking schools. Clause 3(4)(b) enables the Secretary of State to exempt schools by order from Clause 3(2)(c). The consultation procedures for making such an exemption order are set out in Clause 12.

These parts of the Bill will need to be reconsidered in the light of the Prime Minister's meeting with Wyn-Roberts on 19 November. At that meeting, the Prime Minister said -

"the right arrangement would be for Welsh to form part of the core curriculum for schools where the greater part of teaching was carried out in Welsh. For other schools, Welsh could be taught as the second language envisaged as one of the foundation subjects, but it should not be compulsory. The consultation provisions for the exemption power were grossly elaborate and some aspects, for example the requirement to publish a summary of the views expressed by people consulted by the Secretary of State (Clause 12 (3)(a)(iii)) would be vulnerable to judicial review."

The Prime Minister has asked for a very early report on ways in which her concerns might be met.

3. Clause 4 (2) (Attainment Targets)

yes. This Clause says that "the Secretary of State may by order specify in relation to each of the foundation subjects (a) such attainment targets; (b) such programmes of study; and (c) such assessment arrangements, as he considers appropriate for that subject." Does this provide sufficient flexibility to issue guidelines rather than attainment targets for art, music and physical education?

4. Clause 13 (1) (b)(i)

Refers to the PCFC funding sector. The PCFC is the Polytechnics and Colleges Funding Council - but you have to look to Clause 93 (1) to find out!

5. Clause 14 (1)

A minor point. Line 2 - presumably Mr Baker means "a" school or "any" school?

6. Clause 26 (withdrawal of financial delegation)

yes, but may be too late. This Clause provides (in section 1) an LEA with powers to withdraw financial delegation in certain circumstances. It gives (in ^{sub-}Section 8) the governing body the right to appeal to the Secretary of State; and it gives (in ^{sub-}Section 9) the Secretary of State the right to allow or reject the appeal. Are these arrangements acceptable?

7. Clause 27 (1)(3) (b) (Budget shares under allocation formula)

yes. This Clause states that "the allocation formula ... may include provision for taking into account any other factors affecting the needs of individual schools which are subject to variation from school to school". Is this formulation too general. The consultation paper on financial delegation to schools was more specific. It said (in paragraph 5 (b)):

"The development of an appropriate formula for its area would be a matter for the LEA, in consultation with the governing bodies of its schools. Legislation, and subsequent regulations, would set out a broad framework within which a formula should be constructed, and would require, in particular, that it should take account of the number and ages of registered pupils at each school. Factors such as differential social need, and different types and sizes of school, would also require consideration."

8. Schedule 2, Clause 1 (3) (b) (Appointment of headteacher and deputy headteacher)

This states that "the (local education) authority shall appoint the person recommended (by the governing body) unless they are not satisfied that he meets any staff qualification requirements which are applicable in relation to his appointment". According to Section (4) of this clause the requirements can relate to

yes. qualifications; health and physical capacity; or fitness on educational grounds or in any other respect. Does this give the LEA too much scope for frustrating the wishes of the Governing Body in these appointments? The Schedule does not say what recourse the Governing Board has if the LEA refuses to make the recommended appointment. Mr Baker's paper to E(EP) said, on appointments, that "the governing body is to have sole responsibility" (paragraph 4a, first line, of E(EP)(87)10).

9. Clause 45 (3) and (4)

yes These sections set out the procedures for a ballot of parents for GM status. Should they be less onerous?

10. Clause 46 (1) (Acquisition of GM status)

Good
fair. This Clause states that it "applies where in the case of any school which is eligible for grant-maintained status the result of a ballot held in accordance with Section 45 of this Act shows a simple majority in favour of seeking grant-maintained status for the school". A simple majority of what? Of those voting? Of those eligible to vote? The consultation document said it would be a simple majority of those voting (paragraph 5 b); I would have thought it best to be explicit.

11. Clause 61 (8)

- A minor point. This speaks of "a local education authority who are required!"

12. Clause 67 (Discontinuance of GM status)

yes. This Clause contains none of the flavour of paragraph 27 of the Consultative Document - that discontinuance of GM status would be "exceptional", or that the Secretary of State "would not normally expect to approve discontinuation proposals... within the first 10 years of the school acquiring (GM) status".

13. Clause 104 (4)

- This states that "the (local education) authority shall not be required by virtue of subsection 3 (b) above to appoint any person if they are not satisfied that he meets any requirements of any regulations made under Section 27 of the 1980 Act (school and further education regulations) which are applicable in relation to his appointment". I have asked the library to send me a copy of the 1980 Education Act. Is this clause unduly restrictive? E(EP) on 15 July concluded it would be wrong to restrict GM schools to using teachers with professional qualifications.

14. Clause 105 (Withdrawal of delegated powers)

The same considerations apply to this Clause as apply to Clause 26 in paragraph 6 above.

15. Clause 107 (5) (Further Education)

Yes
This section says: "Notwithstanding any provision made by the instrument of government by virtue of any of the preceding provisions of this section, the local authority concerned shall appoint all the members of the governing body of any such instruction as first constituted in accordance with this section". This needs to be read in conjunction with Clause 107 (6), (7) and (8). Is it acceptable?

16. Clause 115 (1) (Reserve powers on ILEA)

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subsequently
accepted
had to
be quan-
titative.
This Clause gives the Secretary of State powers to transfer from ILEA to each of the remaining Councils the functions of local education authority for that council's area. 115 (1) states that this section "applies if, at that time, the number of inner London councils to which functions have been or are proposed to be transferred under Section 114 of this Act is eight or more; and in this section as it so applies "the remaining councils" means the five or fewer inner London councils to which functions have not been and are not proposed to be so transferred." This seems at odds with the E(EP) discussion on 28 September (which preferred a qualitative rather than a numerically precise trigger) and with paragraph 12 of Mr Baker's minute of 3 October to the Prime Minister (which suggested, as possible formulae that the Secretary of State would require inner London boroughs to submit applications for assuming LEA responsibilities where either: -

(i) "the geographical or other circumstances of the boroughs remaining in ILEA, or which would remain in ILEA following the opting out of other boroughs, were such that the maintenance of an effective education service would no longer be possible, or possible only at disproportionate cost; or

ii. there would, without a major restructuring of the electoral arrangements for ILEA, be too few elected members for the effective discharge of their responsibilities.")