

CONFIDENTIAL



10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

23 December 1987

THE NATIONAL CURRICULUM

You will remember the exchange of minutes about the National Curriculum in November.

My minute of 6 November reported the Prime Minister's view that the legislation should be drafted with enough flexibility to enable your Secretary of State to treat art, music and physical education differently from the other foundation subjects and with less compulsion. In particular, she thought that he should be able to issue guidelines rather than attainment targets for these subjects. She also thought it important that the Secretary of State should not be compelled to set attainment targets for history and geography.

Your Secretary of State, in his reply of 11 November, confirmed that the Bill as drafted gave him total discretion on whether or not to specify attainment targets, programmes of study and assessment arrangements for each of the foundation subjects.

We have been looking at the published Bill and I would like to check with you that it does achieve the results on which we agreed. Clause 2 seems to go very wide. It provides for a National Curriculum which comprises the core and other foundation subjects and specifies in relation to each of them attainment targets, programmes of study and assessment arrangements for each key stage up to the age of 16. Under Clause 4(1), moreover, the Secretary of State has the duty to establish a 'complete' National Curriculum as soon as is reasonably practicable.

It is true that Clause 4(2) empowers the Secretary of State to specify in relation to each of the foundation subjects such attainment targets as he considers appropriate for that subject. But it is not clear to a layman how this relates to the requirements of Clause 2.

CONFIDENTIAL

These are of course matters of legal construction and it may be that, despite appearances, Clause 2 does not in fact require attainment targets for all subjects up to the age of 16 to be a part of the National Curriculum. But I would be glad if you could reassure us on the point.

(DAVID NORGROVE)

Tom Jeffery, Esq.,
Department of Education and Science



CONFIDENTIAL

Reference No E 0481

MR NORRGROVE

cc Professor Griffiths

Education Bill

at flap
You commented on Mr Wilson's minute of 18 December that the point in his paragraphs 4 and 5 should be followed up, either by our writing to DES or, if we preferred, by your doing so.

2. I would be willing to write if necessary but since you have offered think it would be better for the letter to come from you. This would exert more pressure, and be more consistent with the formal responsibilities. A letter from No 10 might in any case become necessary if DES cannot give a satisfactory answer. I attach a draft.

G W MONGER

Cabinet Office
23 December 1987

Attachment:

CONFIDENTIAL

CONFIDENTIAL

Please type.
AKS

Draft letter for Mr Norgrove to send to
Principal Private Secretary, DES

The National Curriculum

JAZZAWK

You will remember the exchange of minutes about the National Curriculum in November.

2. My minute of 6 November reported the Prime Minister's view that the legislation should be drafted with enough flexibility to enable your Secretary of State to treat art, music and physical education differently from the other foundation subjects and with less compulsion. In particular, she thought that he should be able to issue guidelines rather than attainment targets for these subjects. She also thought it important that the Secretary of State should not be compelled to set attainment targets for history and geography.

3. Your Secretary of State, in his reply of 11 November, confirmed that the Bill as drafted gave him total discretion on whether or not to specify attainment targets, programmes of study and assessment arrangements for each of the foundation subjects.

4. We have been looking at the published Bill and I would like to check with you that it does achieve the results on which we agreed. Clause 2 seems to go very wide. It provides for a National Curriculum which comprises the core and other foundation subjects and specifies in relation to each of them attainment targets, programmes of study and assessment arrangements for each key stage up to the age of 16. Under Clause 4(1), moreover, the Secretary of State has the duty to establish a 'complete' National Curriculum as soon as is reasonably practicable.

CONFIDENTIAL

CONFIDENTIAL

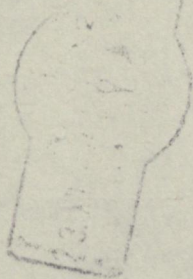
5. It is true that Clause 4(2) empowers the Secretary of State to specify in relation to each of the foundation subjects such attainment targets as he considers appropriate for that subject. But it is not clear to a layman how this relates to the requirements of Clause 2.

6. These are of course matters of legal construction and it may be that, despite appearances, Clause 2 does not in fact require attainment targets for all subjects up to the age of 16 to be a part of the National Curriculum. But I would be glad if you could reassure us on the point.

EDUCATION: GENERAL

POLICY

pt 16



He

R Wilson (cc)

Would you like to follow up with DES

the concern at X?

P 02965

If DES can give no satisfactory answer I suggest Paul Gray should follow up from here.

From: R T J Wilson

18 December 1987

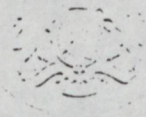
PROFESSOR GRIFFITHS

cc Mr Norgrove ✓

EDUCATION BILL

(But if you prefer we would do it straight off from here.)

1. We have been struggling through the Education Bill, to try to get some idea of what it contains and how it ties in with the decisions of E(EP).
2. It is not an easy Bill to read or understand. Much must depend on what advice has been given to the Department of Education by its lawyers on the meaning of the clauses, and we do not have this advice available to us. Nonetheless you may find it helpful to have the attached notes prepared by Mr Monger and Dr Walker. Two things strike me in particular about the Bill.
3. One is the bureaucratic nature of the procedures which it lays down and the extent of the powers which it gives to the Secretary of State. This has been commented on widely and I will not elaborate on it. But one glance through the Bill confirms that it is true.
4. My second concern related to the national curriculum. You will recall that it has been decided that there should be guidelines, not attainment targets, for art, music and physical education; and that the question whether or not to have targets for history and geography has been left for decision at a later stage. Mr Norgrove's letter of 6 November said explicitly (and carefully) that the legislation should be sufficiently flexible to accommodate these points. Mr Baker confirmed that the Bill "gives total discretion to the holder of my office on whether or not to specify attainment targets...for each of the foundation subjects".
5. It is not altogether clear, at least to the lay reader, where this flexibility is to be found. Clause 2 provides that the National Curriculum shall specify attainment targets in relation to each of the core and other foundation subjects at the end of each stage, and Clause 4(i) imposes a duty on the Secretary of State to exercise his powers so as to establish a complete National Curriculum as soon as reasonably practicable, taking the core subjects first. Subject to this - an important proviso - Clause 4(ii) gives him power to specify such attainment targets in relation to each foundation subject as he considers appropriate for that subject. It may be that this latter provision does the trick: but one would like to be reassured.



6. There is the further point that Clause 11 lays down an extremely complicated consultation process for the making of orders about attainment targets. However much discretion the Secretary of State may have in theory, therefore, his ability to use that discretion in practice may be constrained by the degree of public consultation which he has to carry out. In other words if E(EP) wishes only to lay down guidelines for art, music and physical education or to have only the most limited targets for history and geography, its decisions may be subject to a most elaborate system of lobbying from pressure groups.

7. It may be that this is water under the bridge. Committee Stage on the Bill has already got to Clause 3, although there is still Report Stage and the House of Lords. In any event, you may like to have these notes as a contribution to your own thinking on the subject.

R T J WILSON

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

D P WALKER

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)

rel PM
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.")

CONFIDENTIAL

P 02924

From: R T J Wilson
17 November 1987

PS/LORD PRIVY SEAL

cc PS/Lord President
Mr Norgrove ✓
Professor Griffiths
Mr Langdon
Mr Monger

EDUCATION REFORM BILL

1. The Lord Privy Seal should be aware before Legislation Committee tomorrow that the description of clauses 2-4 in the Explanatory and Financial Memorandum to the Education Reform Bill, dealing with the new national curriculum, does not appear to be on all fours with Government policy as agreed in recent correspondence between the Education Secretary and the Prime Minister.

2. The description of clause 2 in the Memorandum refers to the Secretary of State being "required" to implement, for all registered pupils of compulsory school age, a national curriculum, the main components of which are to be core and other foundation subjects and attainment targets, programmes of study and assessment arrangements for each of these subjects. It is not easy to reconcile this with recent correspondence in which Mr Baker said:

a. that he would be issuing guidelines rather than attainment targets for music, art and physical education as agreed by E(EP);

b. that these same three subjects - music, art and PE - would take up little time in most pupils' curricula in the last two years of compulsory schooling; and

c. that the Bill as drafted will give him total discretion on whether or not to specify attainment targets, programmes of study and assessment arrangements for each of the foundation subjects.

3. We have spoken to officials at DES who say that this discrepancy is due to the hurry in which the Bill is being prepared and that they will brief Mr Baker tomorrow to say that the drafting of the Memorandum will be put right before its introduction.

4. At the meeting tomorrow the Lord Privy Seal may wish to ask for an assurance that the Bill as introduced in the House will be consistent with the policy which has been agreed in this area.

check this in so, and

R T J WILSON



10 DOWNING STREET

Prime Minister

The agreement is
that there should be
attainment targets for
all subjects except
music, art and PE, for
which there will be
guidelines.

DRS
18/11.

mt

P 02919

From: R T J Wilson
12 November 1987

PROFESSOR GRIFFITHS

cc Mr Norgrove
Mr Eland
Mr Monger
Mr Langdon

EDUCATION REFORM BILL: PUBLICITY

1. I have just received the attached copy of a minute from the Education Secretary to the Lord President seeking his agreement to the publication of a booklet which explains in Question and Answer form the Government's proposals for schools.

2. You will see that he intends to finalise the text on Monday next, 16 November, and publish the booklet on Second Reading of the Education Reform Bill. He aims for an initial print of one million copies.

3. It is clearly important to be sure that we are content with the content of the booklet. I have only skimmed it quickly but have three comments:

a. I would want to suggest deleting the three references to "attainment targets" for each subject on page 5;

b. I would also suggest some reference to setting guidelines rather than attainment targets for music, art and physical education;

and c. I would also suggest that this would be a good place for Mr Baker to make it clear, as he offered in his minute of 30 October to the Prime Minister, that art, music and PE will take up little time in most pupils' curricula in the last two years of compulsory schooling.

4. I would be grateful to know if you agree and whether there are any other points in the document which you would wish to see changed. Mr Norgrove will be asking the Education Secretary's private office to let him have a copy of the booklet for the Prime Minister to see. We can decide later precisely how to handle comments. But it would be helpful to establish quickly how far we would want to see it changed.

R T J WILSON