



ELIZABETH HOUSE  
YORK ROAD  
LONDON SE1 7PH  
01-934 9000

The Rt Hon John Major MP  
Chief Secretary  
HM Treasury  
Parliament Street  
LONDON SW1P 3AG

*Price Mink  
Content?*

*Recc  
14/1*

*14 January 1988*

*John Major*

*Yes m*

#### **GM SCHOOLS: ENFORCING THE RECOUPMENT CHARGE**

We agreed in E(EP) in October that the grant to be paid to GM schools should be recovered from local education authorities through a recoupment charge. This is reflected in Clause 61 of the Education Reform Bill now before the House.

We were not able to consider before the Bill was introduced whether any additional powers were needed to enforce the recoupment charge against authorities who delayed or defaulted on payment, wilfully or otherwise. Our officials were asked to work up proposals, in consultation with the Department of the Environment and the Welsh Office, with a view if necessary to introducing additional powers through a government amendment to either the Education Reform Bill or the Local Government Finance Bill.

- I attach an agreed note prepared by officials. It recommends that I take powers to recover GM recoupment charges due on a routine basis by deduction from payments otherwise due to an authority from central government, including payments of revenue support grant payable to a receiving authority for the area. The arrangement recommended is intended to provide a sufficient guarantee of recovering the recoupment charge, without resurrecting the problems concerning the calculation of RSG entitlement which led us originally to reject the grant abatement option as the direct method of payment.

I consider that such additional powers are necessary and I should like if at all possible to introduce the necessary amendment to the Education Reform Bill during the remainder of Commons Committee stage. With that in view, I seek colleagues early agreement to instruct Parliamentary Counsel to draft provisions, as recommended in the attached note.

I am copying this letter to the Prime Minister, to other members of E(EP) and to Sir Robin Butler.

*Thomson*

*Kinnaird*

## FINANCING OF GRANT-MAINTAINED SCHOOLS: ADMINISTRATION OF THE RECOUPMENT CHARGE

### Note by Officials

1. Ministers have agreed that grant for GM schools should be recovered from the LEA by a recoupment charge which the authority would be required to pay on demand. This is reflected in Clause 61 of the Education Reform Bill.

2. Some authorities may be hostile to the Government's policy on GM schools and may seek to frustrate it by either refusing to pay the recoupment charge or unduly delaying payment. Recoupment charges may also not be paid on time simply through inefficiency or by mistake, and it will not always be easy to distinguish this from wilful action by the authority.

3. Officials were asked to consider and make recommendations to Ministers on the options open to them in such circumstances and whether any additional powers to ensure timely collection of recoupment charges should be introduced into the Education Reform Bill or the Local Government Finance Bill. This note reports the results of officials' work. It has been written in consultation with the Department of the Environment, HM Treasury and the Welsh Office, and is being shown to their Ministers.

### Options

4. We have identified four possible options:

- i. leave the Education Reform Bill as it stands, ie provide simply for payment of the recoupment charge on demand. In the event of non-payment, Ministers would need to pursue the authority through the Courts;
- ii. put the Secretary of State in the position of a precepting authority which, under Section 12 of the General Rate Act 1967, has powers to send in a receiver to obtain moneys owing to it from a precept;
- iii. provide reserve powers to deduct any recoupment charge outstanding after a specified period from government grant owing to the authority;
- iv. provide powers such that recoupment charges may be recovered automatically through adjustment to payments of RSG or other government grants and the proceeds of the national non-domestic rate in a single cash transfer between central and local government.

5. Option (i), action through the Courts, does not in our view provide sufficient power to protect Ministers. Action to enforce the charge could be taken only as a last resort, when it was clear that an authority intended not to pay. It would provide no weapon against an authority which deliberately delayed payment whilst maintaining its intention to pay.

6. Option (ii), power to send in a receiver, follows the precedent of the London Regional Transport Act 1984 which puts the Secretary of State for Transport in the position of a precepting authority in recovering the LRT levy from London Boroughs. At first sight it may appear to be more attractive than (i) in that it avoids the Courts. However it is unlikely in practice to be an easy or attractive sanction since it amounts to taking over the affairs of the authority. To our knowledge the power given to precepting authorities in the General Rate Act has never been used, and in 1990 the Act is to be repealed and the LRT levy will also cease. We do not recommend this option.

7. Option (iii), a reserve power to deduct from government grant in the event of failure to pay, has the advantages that it avoids the Courts and allows direct action once the specified period has elapsed. It therefore protects against long delay as well as default. Authorities could in addition be invited to agree to routine collection of the recoupment charge by automatic deduction from payments otherwise due to them from the government.

8. Authorities might be encouraged to enter into an arrangement for automatic deduction if:

- i. after a specified time interval, they could be required to pay interest on any amount owing by way of a GM recoupment charge;
- ii. by entering into a voluntary agreement to pay the charge by automatic deduction from RSG, they would effectively make the payment later than the date on which it would otherwise fall due without payment of interest.

9. A power to charge interest in the event of late payment of an amount due could also be useful in enforcement in that it would bring into play the powers of the Audit Commission to surcharge councillors. However it would provide for interest on a specific cash transfer in isolation whereas the Treasury's preference would be to look at any suggestion to charge interest as a general issue, covering all cash-flows between central and local government. And even with arrangements for voluntary grant deductions backed up by power to charge interest, there could be some delay, with recoupment charges not being paid until some weeks after they were due to the GM school. In the meantime the Exchequer would have to finance GM grant. A delay over the end of a financial year might require Supplementary provision.

10. Option (iv), provision for compulsory automatic payment with other sums due between central and local government, should put timely receipt of the charge beyond doubt. DOE officials consider that the problems they identified over direct alteration to grant entitlement do not arise if, as would be the case with the recoupment charge, it is clear that the deduction is being made to recover a sum which is due from the authority and does not affect the authority's initial entitlement to grant.

11. This arrangement would have several advantages. It may be desirable that RSG and national non-domestic rate proceeds might be paid together as a single net transfer; under this option the cash sum to be paid over would take account also of GM recoupment charges. DOE would calculate the net sum owing to a local area, taking account of central government's obligations to pay the RSG and pooled NNDR proceeds to which the area was entitled, and its obligation to pay NNDR revenue and recoupment charges to central government. Recoupment charges could be taken into account in the net payment on the day nearest the one on which the corresponding grant was due to GM schools. There would be no scope for delay by LEAs in paying the charge, whether as a result of wilful frustration or by mistake, except for the handful of authorities - amongst LEAs or potential LEAs only the City, Westminster and Camden - which are expected to make net payments of RSG and NNDR to central government; and in these cases the amounts could be recovered from other central government grants to the authority. However this arrangement goes further than a reserve power to take action in the event that an authority failed to pay on demand, and it may be criticized as the government taking an unnecessarily harsh power to collect sums owing to it.

#### Conclusion

12. In our view the choice lies between options (iii) and (iv). In either case legislation will be needed to provide the power to deduct from grant; the difference is that under option (iii) authorities would have to be given the opportunity to pay direct and the grant deduction power could only be brought into effect against an unwilling authority where a payment was overdue. Under option (iv) the Secretary of State would be empowered to collect the charge routinely by deduction from grant, immediately it became due.

13. On balance, we recommend option (iv). The power would be framed as an enabling provision but it would be made clear that the intention was to use this mechanism routinely for recovery of the charge even if an authority said it would prefer to pay the charge direct and would do so on time. Our legal advisers see no problem with using an enabling power in this way, provided it is suitably framed, and it is desirable for the Secretary of State to retain flexibility not to make the deduction in this way if particular circumstances dictated. We therefore recommend that an amendment should be introduced into the Education Reform Bill during Committee Stage in the Commons to provide a power to deduct any sum due in respect of a GM recoupment charge from central government grant otherwise payable to the authority, including rate support grant and revenue support grant payable into a collection fund on which the authority precepts.

CCB/A



NB/A

2 MARSHAM STREET  
LONDON SW1P 3EB  
01-212 3434

My ref:  
Your ref:

The Rt Hon Kenneth Baker MP  
Secretary of State  
Department of Education and Science  
Elizabeth House  
York Road  
LONDON  
SE1 7PH

22 January 1988

Dear Kenneth

GM SCHOOLS: ENFORCING THE RECOUPMENT CHARGE

FILE WITH PG.

Thank you for sending me a copy of your letter of 14 January to John Major. I agree that we should make provision for compulsory automatic payment of the recoupment charge for grant maintained schools from other sums due between central and local government. My officials are in touch with yours to discuss what provisions will be necessary in the Education Reform Bill to give effect to this policy as it affects rate support grant and the proposed revenue support grant.

I am copying this letter to the Prime Minister, to other members of E(EP), and to Sir Robin Butler.

NICHOLAS RIDLEY



EDUCATION: Policia PT17.



cc/BG



Y SWYDDFA GYMREIG  
GWYDYR HOUSE  
WHITEHALL LONDON SW1A 2ER

Tel. 01-270 3000 (Switsfwrdd)  
01-270 0538 (Llinell Union)

Oddi wrth Ysgrifennydd Gwladol Cymru

WELSH OFFICE  
GWYDYR HOUSE  
WHITEHALL LONDON SW1A 2ER  
Tel. 01-270 3000 (Switchboard)  
01-270 0538 (Direct Line)

From The Secretary of State for Wales

The Rt Hon Peter Walker MBE MP

27 January 1988

CT/6010/88

NBLM

PLC 6  
2/1

*A. Tennant*

*at Plas*

**GM SCHOOLS: ENFORCEMENT OF RECOUPMENT CHARGES**

I have seen your letter of 14 January to John Major, and also his reply of 19 January.

I am content with your proposal to include in the Education Reform Bill a provision to enable the recoupment charge for GM schools to be routinely deducted from payments of Government grant due to local authorities. As there are no technical problems involved in doing so, this appears to be the sensible way to proceed. It avoids the problems of delays in payment by authorities, while at the same time giving us the flexibility to treat individual cases as the circumstances warrant.

/ I am copying this letter to the Prime Minister, John Major, other members of E(EP) and Sir Robin Butler.

*[Handwritten signature]*

The Rt Hon Kenneth Baker MP  
Secretary of State for Education and Science



EDUCATION - policy pt 17

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Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Kenneth Baker MP  
 Secretary of State for Education and Science  
 Department of Education and Science  
 Elizabeth House  
 York Road  
 London  
 SE1 7PH

Note

Told to Jeffrey  
 (AES) that PM is  
 also content.

RCC6  
 19/1

Dear Sir,

19<sup>th</sup> January 1988

**GM SCHOOLS: ENFORCING THE RECOUPMENT CHARGE**

Thank you for your letter of 14 January.

I agree that it is necessary to take powers to recover recoupment charges routinely by deduction from payments otherwise due to an authority from central government, in the way that you propose. It seems only reasonable that if we owe money to local authorities, and they owe money to us, we should be able to pay out only the net amount of cash owing to a local area. This approach should also ensure that the Exchequer does not have to finance grant to Grant Maintained schools for any significant period of time without full recoupment of the cost, in line with our policy of financial neutrality.

I am copying this letter to the Prime Minister, to other members of E(EP) and to Sir Robin Butler.

Yours Ever,  
 John

JOHN MAJOR

EDUCATION: Policy PTA.

