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Paul Gray Esq
Private Secretary
10 Downing Street
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SW1A 2AA

cc/cp
~~_____~~
25 January 1988

Dear Paul

THE NATIONAL CURRICULUM

David Norgrove wrote to me on 23 December about Clause 2 of the Education Reform Bill and the flexibility allowed for setting guidelines rather than statutory attainment targets for some foundation subjects. *at 11ap P116.*

As David rightly guessed, the legal constructions to be put upon Clause 2 are considerably altered by what is in Clause 4. Clause 2 says that Chapter 1 shall have effect for the purpose of securing implementation of attainment targets, etc. It does not of itself require implementation of the National Curriculum. That is secured inter alia by Clause 6, which lays duties on those responsible to implement the National Curriculum as it exists at any point in time (which includes making sure that the foundation subjects are taught 'for a reasonable time' when nothing more is provided by way of attainment targets and programmes of study); and by Clause 4 which enables the Secretary of State to specify by order the main components of the National Curriculum - attainment targets, programmes of study, assessment arrangements - for each subject as he considers appropriate. There can be no attainment targets until he makes any such order.

As David surmised, the flexibility we look for in treating foundation subjects differently hinges on the breadth of the order making power in Clause 4, taken together with the usual provisions relating to orders in Clause 140 - especially subsection (7). When we saw the clauses in draft, we specifically addressed Parliamentary Counsel as follows "It is desired that the power for the Secretary of State to make orders setting out attainment targets and assessment arrangements should be subject to a proviso that, in the case of music, art and physical education, the Secretary of State may issue non-statutory guidelines instead and that such

issue of guidelines would be regarded as fulfilling his duty under Clause 53(1) [now 4(1)] to secure a complete National Curriculum". He replied "We are completely at a loss to understand what the problem is and what the proposed solution is intended to achieve we have however, added some words to make it clear that the attainment targets, programmes of study and assessment arrangements for each foundation subject are to be such as the Secretary of State considers appropriate for that subject."

After the E(EP) meeting on 28 October and the correspondence which followed it, including David Norgrove's minute of 6 November, we checked again with Parliamentary Counsel. He confirmed his previous view that the order making power is broad enough to enable the Secretary of State to make orders which do no more than specify that teachers and others should take account of guidance - which itself could be extremely broad-brush - in setting objectives for their pupils' learning (attainment targets) and in what they are taught (programmes of study).

I hope that this reassures you.

Yours,
Tom

T B JEFFERY
Private Secretary

EDUCATION: Policy Pt 17



CONFIDENTIAL

Reference No E 0512

MR GRAY

*Rec'd
11/2*

cc Mr Wilson

Education Bill: the National Curriculum

Prop.

You asked if I had any comments on the DES letter to you of 25 January.

2. Mr Norgrove's letter repeated the Prime Minister's view that the Secretary of State should not be compelled to set attainment targets for certain subjects, and recorded Mr Baker's earlier assurances that the Bill gave him total discretion on whether or not to specify such targets. This is not the assurance Mr Jeffery repeats in his last main paragraph. This says that the Secretary of State's order need do no more than specify that teachers should take account of broad-based guidance in setting attainment targets. This apparently means that there will be attainment targets.

3. But I am sure that it is not worth prolonging the legal argument. In the last resort, we have to accept what Parliamentary Counsel says. I suggest a brief reply restating our understanding based on Mr Baker's earlier assurance (so as to draw them out if there really is a difference between that assurance and the one now given) and presuming that when the orders come to be made Mr Baker will bear this assurance in mind and consult as to their content. I attach a draft accordingly.

G W

G W MONGER

Cabinet Office
11 February 1988

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*Re the la
in agreement.
B216
11/2*

Draft letter for Mr Gray to send to

Mr Jeffery, DES

The National Curriculum

Thank you for your letter of 25 January.

I take it that this letter confirms the assurance your Secretary of State gave in his minute of 11 November that the Bill as drafted gave him total discretion on whether or not to specify attainment targets for each of the foundation subjects. No doubt when the time comes to draft the orders you will take into account the views expressed earlier by the Prime Minister and will consult us about their content.

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Mr. [Name] for Mr. Gray to read to

Mr. [Name]

The National Curriculum

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10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

11 February 1988

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25 January.

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Paul Gray

T.B. Jeffery, Esq.,
Department of Education and Science

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Reference No E 0506

MR GRAY

BF

C.F.

As far as I can see the answer
to x is "no". ~~Please state~~
If so, please close DES
cc Mr Wilson for a early
response - say by
next Tuesday.

Education Bill
The National Curriculum

at Prop pt 16 B206
28/1

X / Did you ever get a reply from DES to the attached letter from
Mr Norgrove? The questions it asked were of considerable
interest to the Prime Minister and if there has been no reply
you might like to press DES for one.

Handwritten initials

G W MONGER

Cabinet Office
28 January 1988

attachment:

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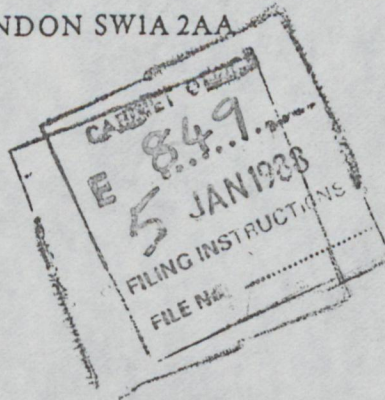
Handwritten notes: "C. H. Wilson sent 5/1", "C. H. Wilson", "re: ", "all"

10 DOWNING STREET

LONDON SW1A 2AA

23 December 1987

From the Private Secretary



E(OP) noted.

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.

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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

EDUCATION: policy pt 17



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File Pm

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

MR. G. W. MONGER

EDUCATION BILL: THE NATIONAL CURRICULUM

Thank you for your minute of 28 January. This did in fact arrive at the same time as the enclosed letter of 25 January from DES. At first glance, the DES letter does seem to meet the concerns raised in David Norgrove's 23 December letter, but I should be grateful for any comments you have.

PAUL GRAY

4 February 1988

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JD