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P 03199

PRIME MINISTER

EDUCATION (SCOTLAND) BILL

E(EP)(88)18

DECISIONS

Mr Rifkind has come back to E(EP) on the four questions on Scottish education which he was asked to reconsider at the last meeting. He has met the Sub-Committee's views on opting out and assessment. There are, however, two outstanding points:

- i. the most important one relates to the power of imposition. Mr Rifkind is still strongly opposed to taking a power of imposition on teachers' pay on the same lines as that put forward for England and Wales in the Green Paper. He believes that it would be a 'very serious mistake';
 - ii. on a lesser point, he has modified his proposals on the composition of the management side to bring them nearer to those urged on him. But under his present plans the Government would still have only a minority of members, although not of votes.
2. On timing, Mr Rifkind proposes to circulate a consultation paper on pay machinery in the second half of August, after the start of the next school session in Scotland. The timetable for preparing his legislation is tight. It is therefore important to settle the outstanding issues at this meeting.

BACKGROUND

3. Mr Rifkind was asked to reconsider four aspects of his proposals for the Education (Scotland) Bill by E(EP) on 7 July (E(EP)(88)7th Meeting). These were:

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- i. whether the Government should take a power of imposition over Scottish teachers' pay;
- ii. what should be the composition of the management side in the new negotiating machinery;
- iii. whether powers should be taken to allow Scottish parents to opt to remove their children's schools from local authority control;
- iv. whether legislation should be used to ensure that assessment along the lines agreed for England and Wales would be introduced into Scottish primary schools.

4. E(EP)(88)18 indicates that Mr Rifkind now accepts E(EP)'s views on the last two issues, that he continues to resist a power of imposition on teachers' pay, and that he proposes a slightly amended voting procedure for the management side of the negotiating machinery.

ISSUES

A Power of Imposition

5. In his paper for the E(EP) meeting on 7 July Mr Rifkind proposed simply to retain the power to reject an arbitrator's award and determine the final settlement himself, subject to Parliamentary order. His new paper now seems to argue against any form of imposition. He probably does not intend to rule out the limited power which he suggested last time, but you may wish to check this.

6. The alternative proposal, put forward by the Chancellor at the last meeting, was that the arrangements for Scotland should be the same as those proposed for England and Wales in the Green Paper. Under these the Government would have the power to impose a settlement, subject to the approval of Parliament, as an alternative to arbitration. The arguments for this alternative are:

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- a. the Government would otherwise be powerless to stop disputes dragging on for long periods, if the unions chose not to settle or to go to arbitration. This is one of the major shortcomings on the old Burnham-style arbitration arrangements, which would be preserved under Mr Rifkind's proposals;
 - b. a power of imposition allows the Government to avoid arbitration, when it has already offered as much as is prudent. This is consistent with the Government's wider policy on access to arbitration. Mr Rifkind's proposals only allow the Government to impose a settlement by asking Parliament to reject an arbitration award - a power which has proved practically worthless in the past;
 - c. any departure from the Green Paper proposals for Scotland would make it harder adopt them for England and Wales. We understand that Mr Baker will be going out to consultation on his Green Paper proposals in September, and will presumably be reporting back to E(EP) in the Autumn. If there is a firm commitment at that time to having a power of imposition in Scotland it will be much more difficult to reopen the position for England and Wales.
7. Mr Rifkind resists a power of imposition in Scotland because he believes:
- i. it would result in widespread industrial action in Scottish schools, and would unite moderate teachers with those already opposed to the Government (paragraph 8);
 - ii. it would not command public support generally, or even support from Conservative councillors or MPs (paragraph 9);
 - iii. the threat of legislation on a power of imposition could be sufficient to persuade the unions to settle (paragraph 9);

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iv. it would put at risk achievement of the other educational reforms which the Government is pursuing at present, since these require the co-operation of teachers to be successfully implemented (paragraph 8).

8. One possibility which may be raised would be to confine the Scottish Bill in the forthcoming session (1988-89) to opting out and other agreed matters, and to postpone legislation on Scottish teachers' pay until 1989-90, when it could go through Parliament at the same time as the legislation on England. This would have:

- i. the advantage of avoiding the same argument two years running, with the risk that the argument on the Scottish Bill would be so intense that the case for similar legislation in England would be reopened, but
- ii. the disadvantage that there would then have to be two Scottish education Bills in the next two Sessions (unless there could be one Bill on teachers' pay in 1989-90 covering the whole of Great Britain). Postponement of a Scottish Bill on teachers' pay might also suggest some weakening on the Green Paper proposals, and encourage Mr Baker to try to reopen them.

Composition of the Management Side

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M. 9. A second question - although less important by comparison - is how, presentationally, the Government's majority on the management side should be secured. Mr Rifkind earlier proposed that, in the event of disagreement between Government and local authority representatives, the Chairman (being a Government representative) should determine the management side's position. E(EP) thought that this would look contrived and that there might well be benefits in giving the Government a straight majority of representatives. Mr Rifkind now proposes a total management side of 8 (6 local authority and 2 Government) with the Government's representatives having weighted votes so that they would have the majority in the event of any dispute. As Mr Rifkind points out, this would formally be consistent with the Green Paper on England and Wales proposals.

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10. Mr Rifkind says the local authorities need 6 representatives to retain a fair representation (paragraph 11). It is not however clear what this means, or why a structure of say 4 Government and 3 local authority representatives could not be adopted. E(EP)'s earlier criticisms would still seem to apply to some extent. In the end, however, we understand that the Chief Secretary may not be inclined to press on this if the outcome on a power of imposition is satisfactory. You may therefore wish to hear Mr Rifkind's justification for the number of local authority representatives before deciding whether you believe that a physical majority of Government representatives on the management side is essential.

HANDLING

11. You may wish to ask the Secretary of State for Scotland to introduce his paper. The Chief Secretary, Treasury will wish to respond. The Secretary of State for Education and Science may wish to comment on the proposals on teachers' pay in England and Wales. The Lord President of the Council may wish to comment on the Parliamentary handling, especially if there is any question of changing the timing of the Scottish legislation.

R.T.W.

R T J WILSON
Cabinet Office
25 July 1988

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