cc FM

11.15 20/12

12.

Ref. A083/3417

PRIME MINISTER

Responsibility for Work-Related Training in the Further Education Sector

Following your discussion on 1 November with the Secretaries of State for Education and Science, Trade and Industry and Employment you asked me to prepare a note on how far, within existing legislation, the Manpower Services Commission (MSC) could, in effect, be transformed into a National Training Commission. The essence of the proposal would be to give the MSC responsibility for the direct funding of some work-related Non-Advanced Further Education (NAFE) by the transfer to the MSC of some part of the Government block grant distributed to local authorities through the Rate Support Grant (RSG) mechanism. You had it in mind that this note should be discussed at a meeting of Ministers under your chairmanship, now arranged for 11.15 am on Tuesday 20 December, to be attended by the Chancellor of the Exchequer, the Secretaries of State for Scotland, Wales and the Environment and the Chief Secretary, Treasury as well as those who attended the earlier meeting.

2. The attached note has been prepared after consultation with senior officials of the Departments whose Ministers will be attending the meeting on 20 December. It is however a note by me as Secretary of the Cabinet and is without prejudice to the positions of the Departments concerned and their Ministers.

3. In your Private Secretary's minute of 21 November you asked that the paper should cover the extent to which a larger or smaller transfer of resources to the MSC would affect the range of courses to be financed by the MSC and left to be financed by local authorities in the normal way. This is now dealt with in Annex B and more briefly in paragraph 16 of the main paper.

4. I am sending copies of this minute and of the attached note to the Chancellor of the Exchequer, the Secretaries of State for Education and Science, Scotland, Wales, Environment, Trade and Industry, Employment and the Chief Secretary, Treasury. I am also sending copies to the Solicitor General, in view of the two legal issues involved (see paragraphs 8 and 9 of the note) in case you wish to invite him also to attend your meeting.

RTA

ROBERT ARMSTRONG

12 December 1983

CR

13

NBPM but to be acted upon AT 14/12

Ref. A083/3452

PRIME MINISTER

Responsibility for Work-Related Training in the Further Education Sector

The last sentence of my minute of 12 December (Ref. A083/3417) indicated that I was sending copies of the minute and the note annexed to it to the Solicitor General in view of the two legal issues involved.

2. The Solicitor General's advice in Annex A to the note specifically applies to England and Wales and not to Scotland; and the position on the two legal issues involved (paragraphs 8 and 9 of the note) may not be the same in Scotland under Scottish law as it is in England. I should therefore have sent a copy of my minute and of the note to the Lord Advocate as well as to the Solicitor General.

3. I am now repairing that omission by sending him a copy of the minute and the note. If you are inviting the Solicitor General to attend your meeting on 20 December, you will no doubt want to invite the Lord Advocate also to attend.

4. I am sending copies of this minute to the Chancellor of the Exchequer, the Secretaries of State for Education and Science, Scotland, Wales, Environment, Trade and Industry and Employment, the Chief Secretary, Treasury, the Lord Advocate and the Solicitor General.

RTA

ROBERT ARMSTRONG

14 December 1983

RESPONSIBILITY FOR WORK-RELATED TRAINING IN THE FURTHER EDUCATION SECTOR

Note by the Secretary of the Cabinet

At a meeting of Ministers under the Prime Minister's chairmanship on 1 November it was concluded that there was a strong case for converting the Manpower Services Commission (MSC) into a National Training Commission with new responsibilities for the direct funding of some work-related Non-Advanced Further Education (NAFE). The aim would be to make this sector of education more responsive to national and local employment needs, and to improve coordination with other sources of training. The use of the MSC - already a modest purchaser of NAFE - as a significant customer for NAFE courses in both Further Education (FE) colleges and the private sector would provide a new financial discipline for FE colleges who were the major providers of NAFE and give closer links to industry. The essential feature of the scheme would be a reduction in net local authority expenditure and the transfer to the MSC of some part of the Government block grant distributed through the Rate Support Grant (RSG) mechanism. Ministers intended that the scheme should not, so far as possible, add to public expenditure.

2. This paper considers how far the proposal can be developed within existing legislation, how large the transfer of finance might be in such circumstances and the other arrangements that would be necessary. It looks particularly at the likely impact of the scheme on local authorities. This is a key question because any proposal further to reduce local authorities' discretion over spending could add to the Government's problems in securing acceptance for its other policies towards local government. The paper is written in terms of England and of the responsibilities of the Secretaries of State for Education and Science and for Employment. If the scheme were to apply to Scotland and Wales, appropriate arrangements would need to be made to cover the interests of the territorial Secretaries of State.

SCOPE WITHIN EXISTING LEGISLATION

3. It would not be possible to change the title of the MSC without legislation. But the Commission already has the necessary power to fund work-related education under its general duty "to make such arrangements as it considers appropriate for the purpose of assisting persons to select, train for, and retain employment" (Section 2 of the Employment and Training Act 1973), and it already spends around £90 million a year in the NAFE sector.

4. The MSC's statutory ten members include only one formally appointed to represent education interests and there is no way of adding to the Commission's membership without legislation. But the Secretary of State for Employment appoints members, and he could make it clear in future to the local authority associations (and perhaps to the Confederation of British Industry and the Trades Union Congress as well) that he would want them to reflect the value of educational experience in nominating people for membership. No new appointments are due until 1 January 1986, but the existing local authority representatives are past or present Chairmen of the Education Committees of their Associations.

5. There is scope under existing legislation to set up new advisory machinery at national and local level to help both Ministers and the MSC in the discharge of their responsibilities. Changes could also be made, without legislation, in the numbers and composition of the MSC's existing 54 Area Manpower Boards whose remit covers employment as well as training aspects of the MSC's work.

6. As far as finance is concerned, there is no legal bar to reducing the Exchequer contribution towards the cost of NAFE through RSG and giving the equivalent amount to the MSC to spend on NAFE courses. What would happen in practice would be that the money spent by the MSC in FE colleges would reduce the net cost of NAFE to Local Education Authorities (LEAs) and thus reduce their relevant expenditure for RSG purposes. Reductions would be made in Aggregate Exchequer Grant (AEG), and in the block grant which forms part of it, of an amount equivalent to the reduction in relevant expenditure (although it would be possible, as an alternative, simply to reduce grant pro rata and so maintain the overall grant percentage). The change would be made in the 1985-86 annual RSG settlement and the public expenditure consequences would be shown in the subsequent Public Expenditure White Paper.

7. There would however be a widely differing impact on individual authorities. A general reduction in block grant would necessarily fall on all local authorities in receipt of grant and not just on those with education responsibilities. Amongst LEAs, some would do much better than others because of the differing amounts of block grant they receive (which depends on rate resources as well as on spending needs). The Inner London Education Authority (ILEA) which accounts for just under 11 per cent of NAFE expenditure in England would benefit particularly. It gets no block grant because of its high rate resources and high spending in relation to need. To the extent that it managed to sell courses to the MSC, ILEA would receive a windfall gain which it would be free to use as it chose.

No

8. None of these effects would in themselves provide a basis for legal challenge. But there is just a possibility of legal challenge to the Secretary of State for Education and Science on the grounds that loss of grant under this proposal, combined with Government

measures to contain local authority expenditure, could make some individual local authority unable to fulfil its statutory duties under the 1944 Education Act and so call in question the Secretary of State's duty to ensure that it so fulfils them. The Law Officers' opinion is being sought on this point.

9. If Ministers wanted to allow the MSC to concentrate its efforts on training and on work-related NAFE, the Secretary of State for Employment could take back the employment service, relying on his reserve powers in the Employment and Training Act. A copy of the Law Officers' advice is at Annex A. This agrees that the powers may be used in this way, but notes that this would go to the limit of what can be legally justified. In my judgement, whatever the strict legal position, it will be politically more difficult to proceed without legislation if Ministers significantly alter the role of MSC by taking away a major existing function at the same time as adding a new one. I would not therefore recommend the removal of the employment service work at this stage. If however Ministers wanted simply to emphasise the MSC's new responsibilities it would be possible, if it were felt this would be helpful presentationally, to group the training side of the Commission's work under a new non-statutory title such as "National Training Agency".

10. The MSC could thus become a National Training Commission in all but formal title without any new legislation. But there may be some risk of legal challenge and of Parliamentary and local authority objection, and even resistance. In practice that risk obviously grows in proportion to the opposition (both initial and continuing) which the proposals attract. Both this, and indeed the amount of support for them, depend on the scale of reduction in RSG, the impact of the new scheme and on the arrangements made to make the proposals work.

FINANCE

11. Relevant expenditure on all local authority services in England in 1983-84 is about £22 billion, of which about half is funded by central Government principally through block grant. Total expenditure on the NAFE sector is about £1.2 billion of which some £800 million is devoted to provision that is in some sense work-related. Of that about £325 million may be said to be met through block grant, although none of the grant is actually hypothecated to particular services or activities. Another £325 million is funded from the rates. The MSC itself already provides about £90 million as a customer for courses; and the balance comes from fees from individuals, employers, industrial training boards etc.

12. A reduction in relevant expenditure and an equivalent increase in MSC funds would enable employers, industry and Government through the MSC directly to influence NAFE provision and to buy in NAFE courses in the private as well as public sectors. But, by the

 £370.- £560- 105,000.

same token, it would make it more difficult for local authorities to manage their resources coherently, because a much larger proportion would be dependent on the decisions of an external purchaser. If for example £200 million were switched to the MSC, some 30 per cent of the NAFE budget would be dependent on external purchasers compared with the present 12½ per cent or so, represented by current MSC and fee funding. These are of course only averages. In practice there would be wide variations from college to college and from area to area depending on the type of NAFE provision the MSC wanted in particular areas, their asessment of colleges' ability to make this provision to the standards they require, the existing capacity of FE colleges, and the availability of other capacity in the private sector.

13. The likely net effect on public expenditure of the switch is difficult to predict. Neither the proposed reduction in RSG nor the new rate-capping mechanism, which is in any case intended to be selective, can be relied on to ensure that the overall reduction in net local authority expenditure will match the increase in MSC's expenditure. Although Ministerial statements and White Papers indicate the Government's intentions and expectations, it has no power to force local authorities to spend (or to stop spending) any particular sum on NAFE or to control the type of courses on which it may be spent. Some net additional cost might result for example from the differing impact on individual local authorities as explained in paragraph 7 above. Where an authority is a net gainer, it may choose to expand its education and training activities rather than pass on the benefit to the ratepayers. Where an authority is a net loser, it may seek to maintain its NAFE or other expenditure by increasing the rates. There may also be some transitional costs, for example in salaries and redundancy payments during the period when local authority colleges were adapting to the MSC's requirements. It is not possible to estimate any net additional cost since this will depend in part on the pace of change and the ease with which the local authority colleges adapt to the MSC's requirements. The outcome is unlikely to be known until some months after the end of the financial year and may vary from year to year. It seems likely however that for any given level of transfer of finance from RSG to the MSC any net cost would not be more than a fraction of that figure.

14. The Treasury consider that any new method of financing training must be so arranged that it does not add to public expenditure as a whole. For the reasons mentioned in the preceding paragraph it is in practice not possible to make the transfer from financing through local authorities to financing through MSC in a way which can guarantee this result in advance. The best solution may therefore be to make some assumption, which would inevitably have to be arbitrary intitally, about net additional cost and to offset this by a reduction in the provision for MSC expenditure for other purposes. The extent and appropriateness of the adjustment might then be reviewed from year to year in the light of experience.

THE OPTIONS

15. There seem to be two options for the transfer of funding. One is the transfer of a major part of the RSG provision, perhaps £200 million a year; the other the transfer of a smaller amount of perhaps £100 million a year. In either case the earliest the transfer could take place would be 1 April 1985 (the 1984-85 RSG settlement already having been announced), and it would be possible to phase the RSG reduction and consequential increase in the MSC's grant over a period of years. The Department of Employment and the MSC favour a transfer of £200 million a year from the start (or at least reached very quickly). The Department of Education and Science think that the better option is £100 million, built up gradually from a base of around £30 million over 3-4 years.

16. The note at Annex B describes the way in which the two sums of money might be used and the effect each might have on the courses provided. Under both options FE colleges would remain responsible for a substantial part of work-related NAFE expenditure as well as for the £400 million currently spent on non-vocational FE. They could however in time lose some business to the private sector, and some of the money now spent on providing courses for 16-19 year olds (demand from whom may in any event be reduced by demographic changes) would go on courses designed to provide post-experience training for all ages and on spending designed to influence the quality, relevance and cost-effectiveness of courses less directly, eg in staff training, course development, provision of better information networks etc. The main arguments that need to be considered in deciding between the two options seem to be:

i. <u>The impact on the FE system</u>

The Department of Employment and MSC believe that MSC needs at least an extra £200 million a year if the change is to have the maximum initial impact and to provide enough leverage to bring about the changes they want. They believe that MSC must be able to buy a significant number and range of courses in a majority of colleges as an actual customer and on locally assessed judgement of need. If they were given the smaller amount they say they would need to adopt a different approach, using more money on central spending (on teacher training etc) and a lower amount on direct funding of courses. This would reduce the amount of money available for course provision overall. The Department of Education and Science disagree. They agree that some additional central spending might be useful, but they think the greater part of the figure could be spent on selective course provision in a way which would not be disruptive and which would make a significant impact on courses where present FE provision was considered less responsive to need.

ii. The impact on local authority expenditure

Under either option a change in emphasis from courses for 16-19 year olds and the diversion of some resources now spent on direct funding of courses in FE colleges may lead LEAs to consider spending more on NAFE provision to make up for the loss. But the larger transfer option probably carries a higher risk of pushing up expenditure than the smaller figure. The significant change in funding arrangements represented by the larger option could also lead local authorities to raid other parts of their budget, especially their schools budgets, to make good the deficits. This possibility - which must always arise on any attempt to modify the boundaries between central and local government responsibilities - could have undesirable implications for other Government policies.

17. Neither option would escape opposition from local authorities, because both involve the transfer to control by a quango of substantial sums previously controlled by local elected bodies. Both options therefore run the risk - which must be weighed against the advantages of change - of worsening the Government's general relations with local government and adding to its problems in securing acceptance for the severe rate support grant settlement for 1984-85, the legislation to limit rates and the proposal to abolish the Greater London Council (GLC) and the metropolitan county councils. In the Department of Education and Science's view it could also put at risk policy initiatives on the wider education front, particularly in the schools, which depend on the cooperation of LEAs. In both cases not only the actual working arrangements devised for the MSC in its new role and for the transfer of funding, but also the way in which the decisions are presented, will be critical.

WORKING ARRANGEMENTS: INVOLVEMENT OF EDUCATION INTERESTS

18. A key factor will be the way in which the MSC is able and is seen to be able, particularly in the early years of adaptation to the new system, to respond sensitively to the problems of the LEAs as managers and providers of the major part of work-related education. This means that arrangements will be needed to involve both the Secretary of State for Education and Science and the LEAs in the decisions taken by the MSC and by the Secretary of State for Employment as the sponsoring Minister. The part played by the Secretary of State for Education and Science, in particular the extent to which he is seen to influence decisions and represent education interests at national level, may be looked at particularly critically.

19. The Secretary of State for Education and Science will continue to have overall statutory responsibility for the FE sector. Thus his relations with the LEAs will bear upon all courses run by FE colleges whether or not for the MSC. So will those of Her

Majesty's Inspectorate whose basic role will be unaltered. The MSC will continue to report to the Secretary of State for Employment on their NAFE as all other activities but the Secretary of State for Education and Science would be closely involved in the development of and decisions on the MSC's plans for expenditure in the NAFE sector and their implementation. It would be agreed that he would be consulted about any significant departure from plans during the year.

20. The detailed arrangements for involving the DES and LEAs would need further work by the two Departments in consultation with the MSC, but it would be important not to tip the balance too far against the key employer interests. The broad outline might be as follows.

No

21. At national level, the Secretary of State for Education and Science and his officials would be involved each year, as the Secretaries of State for Scotland and for Wales are now, and as the Secretary of State for Trade and Industry might be in future, in the consideration of the MSC's Corporate Plan, including the detailed work lying behind it. In practice this would involve consultation at the formative stage as well as at the stage of the formal submission of the Plan. There might also be, on the model of the existing Youth Training Board, a new non-statutory body to advise the MSC on its expanded NAFE activities. The board could be chaired by the Chairman of the MSC and its membership would include representatives of customers and suppliers of NAFE as well as Department of Education and Science, Department of Trade and Industry and Department of Employment assessors.

22. At local level there would need to be close and continuing contact and consultation between MSC officials and LEAs. This would be the main mechanism for the planning of courses in FE colleges and assessment of MSC requirements within national plans. It might be useful for this purpose to strengthen the MSC's area offices by the employment of staff on secondment from the education service.

23. These day-to-day working arrangements would need to be supported by new formal planning and consultation arrangements at local level. These might be based on the MSC's existing Area Manpower Boards whose membership, number and geographical coverage would need to be reviewed. The boards could be strengthened to give improved representation for LEA and professional education interests. They would be able to consider detailed plans for local NAFE provision in accordance with the guidelines set out in the MSC's Corporate Plan, and they would provide the main feedback to the centre on local implications of MSC plans and priorities for work-related education. An effective dialogue with MSC staff would be essential.

24. These arrangements could require some additional manpower in the MSC. The Department of Employment suggest that their preferred option of a transfer of around £200 million would need at a rough

estimate some 150 extra staff. It would be for consideration whether this extra manpower would be found by reductions elsewhere in the Department of Employment Group or whether there would have to be an addition to Department of Employment Group manpower totals.

TIMING OF ANNOUNCEMENT AND PRESENTATION

25. Timing is critical. If the additional funds are to be given to the MSC in time to have a significant impact on FE course provision for the academic year beginning September 1985, detailed discussions with LEAs need to start early in 1984. The Government must in any event be ready to discuss the implications of the change in funding arrangements by May next year when negotiations begin on the 1985-86 RSG settlement. This means that an announcement would need to be made as early as possible next year. A White Paper could be produced in January which could bring together a number of announcements on other fronts, for example the future of the Youth Training Scheme and of adult training.

26. Local authorities' reactions to any transfer of resources are likely to be adverse and will no doubt be considerably affected by the amount of resources transferred. The main requirement will therefore be to present the proposal not as an attack on local authority competence but as a move to link work-related education programmes, which would still largely be provided by local authorities, even more closely to the needs of local industry and employers. The effect on individual authorities would vary, but in the aggregate local authorities would not for the most part be losing resources: they would simply be getting them by another route. These points would need to be brought out when setting the new scheme in the context of the wider presentation of the MSC's training work in the White Paper.

27. The question of precisely how best to handle the local authorities both around the time of the announcement and subsequently will need careful attention, particularly since they will have had no advance warning of the Government's intentions.

28. In addition, since this would be a major new responsibility for the MSC itself, the Government would need to give, and be seen to give, clear guidance on what it expected the MSC to deliver. Some of this guidance might be contained in the White Paper but there might also be a meeting between Ministers and the Commission and a formal letter to the Commission which Ministers might wish to make public.

DECISIONS REQUIRED

29. If Ministers wish to proceed with a scheme for transferring NAFE finance from RSG to the MSC which does not need legislation, they will need to decide now:

i. The amount of finance to be given to the MSC
(paragraphs 11-17)

The choice is somewhere between a figure of around £100 million a year built up over time, which the DES regard as the highest appropriate figure and the most the local authorities might be induced to tolerate, and a figure of around £200 million a year built up rather more quickly, which is what the Department of Employment think is needed to be effective. The judgement is for Ministers and depends essentially, subject to advice from the Law Officers on the risk of legal challenge to a substantial transfer, on an assessment of the reaction of local authorities to the size of the transfer, the leverage which a given size of transfer will provide to achieve the central aims of change, the ability of the MSC to distribute the money successfully, and the net effect on public expenditure and manpower. It may be desirable to make some adjustment in MSC expenditure, in relation to the figure chosen, to offset the risk of any net additional public expenditure arising from the transfer.

ii. Whether the MSC should concentrate all its energies on training and work-related education, or should also continue to run the employment service
(paragraph 9)

There are conflicting considerations here. One is the ability of the MSC to cope with a complex of tasks. On this basis the larger the transfer of responsibility for funding NAFE, the stronger the case for returning employment-related work to the Department of Employment. On the other hand, the return of the employment work would itself be controversial with the trade unions and employers. It would also be disruptive. Perhaps the decisive argument in favour of leaving the employment service with the MSC is that the addition of work-related training in NAFE to the responsibilities of the MSC without legislation would be less likely to attract legal challenge or Parliamentary criticism if it were presented simply as an extension of the MSC's existing role in the training area, with no change in its other responsibilities.

iii. The general arrangements for involving education interests
(paragraph 4 and paragraphs 18-23)

These include the changes which might be made to the composition of the Commission's own membership after January 1986 when vacancies arise, and the detailed arrangements for consultation at both national and local level.

iv. The nature and timing of any announcement (paragraphs 25-28)

The suggestion is an announcement in January by means of a White Paper about the MSC's general training and work-related educational role. This would present the proposed change in funding arrangements as having a major beneficial effect on the content and direction of work-related education but relatively little effect on where it comes from in the LEAs.

30. Ministers will also note that further consideration will be needed on whether and how to apply the proposal to Scotland and Wales. Careful consideration also needs to be given to the handling of the local authorities both around the time of the announcement and afterwards.

9 December 1983

Opinion of the Solicitor General

I am asked to advise the Department of Employment as to whether or not certain functions presently laid to the Manpower Services Commission can lawfully be transferred to the Secretary of State under the power contained in Section 3(4) of the Employment and Training Act 1973 without the need for further legislation.

2. I am of the opinion that they can.

3. The functions concerned fall into two groups:

(a) Certain of the functions that may be exercised by the Commission under Section 2(1) of the 1973 Act "for the purpose of assisting persons to select, train for, obtain and retain employment suitable for their ages and capacities and to obtain suitable employees ..."

(b) Certain functions exercised by the Commission under Section 2(2)(a) of the Act as agent for the Minister.

4. So far as the functions exercised under Section 2(1) are concerned, Section 3(4) of the Act provides that if the Secretary of State considers that any action for the purposes of Section 2(1) should be taken in pursuance of the Act otherwise than by the Commission, or otherwise than by the Commission alone, he may after consulting the Commission about the matter make arrangements for the action to be taken by himself.

5. Although this discretionary power is fairly widely drawn it is subject to review by the Courts at the instance of a person having a sufficient interest and must be exercised in accordance with the express words of the Statute. This means no more than that the procedural requirements laid down by the Act must be strictly adhered to, and I assume that there will be no difficulty in complying with these conditions. But quite apart from the question of procedure a Court will be concerned with the manner in which the discretion is exercised. In this context I consider that the Court would enquire as to whether or not the Secretary of State had kept

within the bounds of the Act and had acted reasonably, for a proper purpose and in good faith. Strictly speaking, each of these considerations forms a separate ground for legal challenge, but in this particular case I think that they all come down to the same question - is the proposed exercise of the power a proper use of the discretion conferred upon the Secretary of State by Section 3(4) of the Act?

6. I would agree with the assessment made by those instructing me that the manner in which the discretion is to be used "goes to the very limit of, but not beyond, what can be legally justified". I think it particularly important that the MSC is not to be deprived entirely of its functions in relation to at least some of the purposes contemplated by Section 2(1) of the Act. It is also significant that the proposals do not affect the rights of individuals. In order to minimise the risk of legal challenge it is important to be able to show that the power is not in reality being used to repeal the whole of Section 2(1) so far as the Commission is concerned. In the light of what I am told I think this condition is satisfied, and accoringly I consider that a Court would be unlikely to interfere with the exercise of the discretion in the manner proposed.

7. I have also considered the proposal from the point of view of legal policy. The power under Section 3(4) appears, from the background material with which I have been supplied, to have been designed as one for use in last resort, where for example the Commission had failed to provide an adequate service, or had failed to obey directions to improve it. I note that Section 3(2) confers power on the Secretary of State to give directions to the Commission modifying its functions, including depriving it of some of its functions, and that there is nothing on the face of the Act constituting a legal impediment to a substantial transfer of functions by use of the Section 3(4) power. Nevertheless, the proposed use of the power in preference to separate legislation will attract sensible criticism: it falls short of what is ideally desirable as legal policy, particularly in respect of the

consequential transfers of property, rights and liabilities. However, in my opinion the margin by which it falls short of what is ideally desirable as legal policy is not so wide as to render the proposed use of the power improper.

8. So far as the second group of functions [ie those exercised by the Commission under Section 2(2)(a) of the Act] is concerned, I see no particular difficulty in effecting the necessary transfer although it will be necessary, of course, to examine the exact terms of the agreements made between the Commission and the Secretary of State under that Section.

9. I do not think that the Ministers of the Crown Act 1975 applies to the transfer of functions between the Commissioners and the Secretary of State. It is intended to deal with transfers between one Ministry and another.

10. This advice applies to England and Wales and not to Scotland.

Law Officers' Department

28 October 1983

EFFECT ON NAFE PROVISION OF THE TWO OPTIONS

1. In simple arithmetic the £200m transfer favoured by the Department of Employment represents 16% of total NAFE spending and 25% of the cost of work-related NAFE (or 30% of the cost net of fees). A £100m transfer represents 8%, 12½% and 15% respectively. Neither option would directly touch non-vocational courses (O and A Levels etc) on which £400m is currently spent in FE colleges. But the effect on the courses provided in the NAFE sector could be much greater than the arithmetic suggests because of the way in which the MSC would use the transferred resources. It could also be significantly different under the two options.

OPTION 1 - TRANSFER OF £200m

2. A transfer of £200m would enable the MSC to buy a large range of work-related training courses. It would also enable it to spend money centrally on the extension and development of college staff training and on the development of new courses and new methods of teaching which would influence all work-related education in the NAFE sector. The precise number of places provided would depend on the type of course and the extent to which the MSC attracted additional funding from employers and others. But one of the MSC's objectives would be to make more cost-effective use of college resources, and so, they believe, train more people for the same money.

3. In buying NAFE courses the MSC would be aiming to

- bring the occupational mix of courses more closely in line with national and local labour market demand;
- shift the balance away from more traditional to newly emerging skills and towards the acquisition of new technical skills for occupations like distribution and secretarial work;
- make courses more relevant to work needs by increasing industry's input, keeping courses up to date and reducing course length to the minimum needed to give broad based occupational skills and the specific skills needed for particular jobs;
- ensure that entry to courses was not unnecessarily restricted and that arrangements to give individuals access to courses were as flexible as possible, e.g. not tied to the academic year;
- improve the quality and cost-effectiveness of provision in colleges by requiring them to compete with private sector providers of training where available.

In so far as these developments are already in hand in FE colleges, DE/MSC believe that a transfer of funding would accelerate them.

4. FE colleges which accepted the MSC's requirements (which would themselves be progressively developed so as not to demand an unrealistic pace of change) would continue to provide MSC funded courses, as they do now under the TOPS system. In many cases colleges would need simply to modify existing provision. Requirements would be planned at local level with educational and employer interests, the planning of the MSC's TOPS and YTS provision being integrated in the process. Colleges would continue to provide non-vocational courses and would also still provide work-related courses in areas not chosen by MSC as priorities for funding.

5. But there would be two potentially significant changes. First, although the MSC would need at least in the early years to give FE colleges some guarantee of a minimum level of MSC business, they would want to be free to buy from the private sector if FE colleges were unable or unwilling to adapt to providing the kind of courses they needed. Second, although most of the MSC funded courses would initially fit with the traditional NAFE role of helping school leavers move from full time education to work, there would be a progressive change of emphasis to courses open to people of all ages. Although many 16-19 year olds could be expected to benefit from such courses, there could be some unsatisfied demand if the change of emphasis from initial to post-experience training were carried out quickly and if the decline in student numbers did not offset the change. In that case LEAs, who have a statutory duty to provide for 16-19 year olds, would have to consider either financing initial vocational courses themselves to meet the demand or - and this is more likely - providing alternative non-vocational courses in schools and colleges. This could mean higher public expenditure and fewer young people having a vocational education or both. It is difficult to assess the risk with any certainty. DE believe that the risk is fairly small. DES believe that there could be real pressures on local authority spending as a result.

OPTION 2 - TRANSFER OF £100m

6. A transfer of only £100m a year could be spread round the country and used in much the same way as the larger transfer. In that case the number of places purchased by the MSC would simply be less. But in practice DE/MSC believe that the smaller option would require a different strategy. To achieve maximum impact the MSC might run a central operation and concentrate funding on particular types of courses (e.g. the updating of technical skills) or on particular areas of the country. The MSC would avoid areas of activity where FE colleges were already reasonably responsive to industrial needs. DES believe that this would be the right approach because it would still allow a significant amount of the funds transferred to be used for course provision. But DE/MSC believe that £100m worth of courses, however targeted, would have much less of an impact on the NAFE sector and offer little scope for exposing it to competition. Under this option therefore they would combine more selective spending on courses with more expenditure outside FE colleges

designed to influence courses centrally. If for example funds were built up gradually from a base of around £30m over a period of 3-4 years, the initial sum might be spent on training and updating of college staff in new training methods and skills, in developing new courses and teaching materials and demonstrating new learning methods, and in providing better information networks for employers, LEAs and individuals about the type of skills likely to be needed in the future and the kind of courses available.

7. Under this option therefore, a larger share of the resources transferred might go towards influencing work-related NAFE by central spending rather than by commissioning individual courses on the basis of local judgement of need. To the extent that this central spending did not simply replace spending on teacher training and so on by LEAs, less money overall would be available for course provision. In addition a marked switch of emphasis towards post-experience training in those courses which were funded by MSC, would mean as with option 1, a reduction in the amount of finance available for initial education in FE colleges unless local authorities themselves increased the funds for this purpose.

THE BALANCE OF ADVANTAGE

8. Under both options, FE colleges would continue to provide non-vocational courses. Under the first option some 75% of work-related NAFE would continue to be funded in the normal way, and under the second option nearly all of it would be so funded. But in both cases some of the resources transferred would be lost to initial training for 16-19 year olds and taken up by post experience training, and particularly under MSC's likely strategy for thesecond option, some resources currently directly devoted to course provision would be used for other purposes.

9. The Department of Employment believe that the MSC will not be able to make a significant impact on the type, quality and cost effectiveness of NAFE provision unless they can buy a significant number of courses to their specifications as a direct customer and on a locally assessed judgement of need. They also believe that, if MSC are to give local education authorities reasonable certainty for planning and budgeting purposes about the number and type of courses required, they need to have sufficient resources to fund a large core of courses covering all LEAs and most colleges rather than selected ones. They think option 1 would therefore not only have a much greater impact on NAFE - but actually a less disruptive effect on local authority planning as well as allowing planning for all MSC provision and work related NAFE to be integrated at local level.

10. The Department of Education and Science do not accept that a smaller switch would necessarily mean little direct

funding of courses. They believe that MSC should simply purchase courses more selectively under this option. This could be co-ordinated at national and local level, building on the existing machinery for consultation and planning between education and employer interests, in a way which would have the necessary impact without causing serious disruption. They believe that any attempt to make an impact from transfer of funds to MSC on this important area, where the problems are at least as much those of employer demand as of college supply, should be handled progressively and fully monitored. In contrast a massive change of direction could, they believe, adversely affect areas of NAFE which are widely believed to function well, and it could create pressures for extra public expenditure.