



NAPM AS 23/11
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QUEEN ANNE'S GATE LONDON SW1H 9AT

23 January 1985

R Patrick,

LOCAL GOVERNMENT BILL: COUNTER-OBSTRUCTION

In his letter of 9 January Kenneth Baker proposes new measures to deal with potential abuses by the GLC and MCCs. I agree that further measures are necessary and I think it crucial that they should be effective and not reactive and belated.

With this in mind I see great merit in Grey Gowrie's case that commitments to third parties entered without consultation with successor authorities should be regarded as void. I appreciate that this involves cutting across the rights of third parties and might be awkward for some in the voluntary sector, but in these unusual circumstances where a public authority is behaving as irresponsibly as the GLC, I believe this to be justified and defensible, and indeed ultimately in the best interests of all responsible organisations.

I should add, however, that were it eventually decided to follow Kenneth's original proposal I would favour the issuing of general consents to cover cases where acceptance of responsibility by an appropriate successor authority clearly exists, and to ensure that certain transitional commitments to the voluntary sector going beyond the date of abolition are honoured. My officials will be in touch with yours about the details of these consents should it be necessary.

I would also support very strongly Kenneth's reservations about the creation of a new criminal sanction. Any new offence would presumably need to apply to individual councillors. But councillors who are not deterred from making illegal agreements by the threat of disqualification from office might well not be deterred by the possibility of a fine. But in any case a new offence could well be counter-productive because of the opportunities presented to rebel councillors for "political martyrdom" and for using the criminal courts as a platform for advancing their cause. This would be undesirable in itself. Further, if as seems likely, councillors were tempted to refuse any fines, there would be the prospect of imprisonment for non-payment. The possibility that a large number of councillors on an authority such as the GLC might be party to the offence emphasises the difficulties that could arise.

In short, I consider that the creation of a criminal offence along the lines of that discussed by Kenneth would represent a significant and unwelcome extension of the criminal law; and I doubt whether it would serve as an effective deterrent and fear instead that it might well have the reverse effect.

/Finally,

The Rt Hon Patrick Jenkin, MP

Finally, I note that we have no proposals before us to deal with "front-loaded" payments where the GLC and MCCs can artificially inflate their grants to willing recipients such as "GLC in exile". They would not then have to rely at all on successor authorities. Although such grants could presumably be the subject of inquiry by the auditors that would not affect the recipients. I assume that this has been considered, and that we shall have to rely on the pressure of public opinion to deter the GLC and the MCCs from activities of this nature. The only alternative possibility that I can see would be to make all the GLC's and MCCs' expenditure in their last period of existence subject to your detailed control. But I well understand why you wish to avoid that.

I am copying this to members of MISC 95, the Lord Chancellor and Sir Robert Armstrong.

Law,
Law

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