

CONFIDENTIAL

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For Monday
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PRIME MINISTER

cc J Wiggins CO

SCHOOL TEACHERS

I attach two notes prepared in response to the conclusions reached at your meeting on 1 May. You have arranged a further meeting for 23 May at which the papers should be discussed.

The Burnham Primary and Secondary Committee meets tomorrow. Subject to the outcome of that meeting I propose to send you a further minute before 23 May about the possibility of our taking some further action in relation to the current situation in the schools.

Copies of this minute and its attachments go to the Secretaries of State for Scotland, Wales and Northern Ireland, the Chancellor of the Exchequer, the Secretary of State for the Environment, the Lord Privy Seal, the Secretary of State for Employment, the Attorney General and Sir Robert Armstrong.

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14 May 1985

SCHOOL TEACHERS: CONTRACTS OF EMPLOYMENT

Note by the Secretaries of State for Education and Science and for Scotland

The record of the 1 May discussion on school teachers invites us, in consultation with the other education Ministers and the Attorney General, to consider further how a satisfactory teachers' contract of employment could be designed, introduced and enforced, and to report back (conclusion 2).

Teachers' duties and responsibilities

2. Annex A is a statement of the duties and responsibilities which a professional teacher should be expected and willing to carry out. We believe there is nothing in the statement which the public would not expect of a teacher. It has much in common with the English and Welsh employers' proposals. We believe that there would be advantage in giving publicity to such a statement and contrasting it with the current widespread refusal to perform many of these tasks, and insistence by some of the unions that many of the tasks are voluntary.

3. A statement of this kind is neither a job description nor a contract. Many of the tasks are the collective responsibility of the school staff as a whole and the individual teacher could not reasonably be required to undertake them all without limit. A contract could prescribe a core of "programmable" time each week, during which the teacher would be available, at the direction of the head and his senior colleagues, to undertake an appropriate share of the collective responsibilities of the school staff, and put teachers under an obligation to spend further time on professional matters such as marking and preparation but with the place and time for doing that left to the teachers' discretion. The whole would be seen as representing the teachers' job.

4. Annex B sets out a possible statement of the relevant part of a model contract appropriate for England and Wales. (In Scotland the precise content would necessarily differ in some respects.) Again it has much in common with the English and Welsh employers' ideas. To seek to specify in every contract the precise amount of time the teacher would work on each of the listed duties would produce an over-rigid result. This would neither cater for the very different emphases within the jobs of individual teachers nor would it be conducive to flexible management. Further, the specification of each duty would leave defined a clear "voluntary" area outside the stated contract, with the risk of overtime claims being lodged. We think that inconsistent with the concept of a teaching profession.

5. The statement of duties and responsibilities taken together with the form of contract should require teachers to take part in the appraisal of teacher performance (Annex A, item 10). The appraisal arrangements will necessarily vary from small primary schools to large secondary schools. What is essential is that systematic arrangements are made, and that the performance of each teacher is assessed by senior colleagues and the authority's advisers (possibly with some peer group involvement) across the whole range of the teacher's duties. At Annex C - as an example - there is a draft note and appraisal form for an "entry grade" teacher prepared in the context of the Burnham salary structure discussions.

Legislation

6. In principle new contracts could be imposed by primary legislation. There seem to be three possible methods. The first is to provide in the legislation that all contracts between local education authorities and teachers are deemed to include certain core provisions and any provisions in a contract inconsistent with the core provisions would be void. This would impose inflexibility in that the core provisions could be amended only by primary legislation. The second alternative is to give power for the Secretary of State to stipulate

in subordinate legislation core provisions that are deemed to be included in a teacher's contract. While this is more flexible central Government would still be seeking to override the freedom of an employer to enter into an agreement with an employee. The third alternative is to require local education authorities to include certain core provisions, specified in primary or subordinate legislation, in the contracts of teachers. The additional disadvantage of this alternative is that a duty would be on local education authorities and the question of the enforcement of that duty would arise.

7. We recognised on 1 May that it would be very unusual for Parliament to impose more onerous contracts of employment by new primary legislation on any particular group of employees. We also recognised that in so far as the sanctions against teacher disruption were involved, the problem lay less in the form of the existing contract than in employer willingness to take resolute action against teachers in breach of contract. Resolution may dwindle further amongst English and Welsh counties, following the ACC elections on 2 May. We do not commend primary legislation as a means of introducing new contracts for all teachers.

8. Legislation to require new tighter common-form contracts for newly employed or promoted teachers only, leaving others on their present contracts, might attract less opposition and be easier to manage in terms of change. But the fundamental flaw of the legislation path would remain - employer unwillingness to enforce. There would moreover for many years be two classes of teacher, on old and new contracts respectively, increasing the managerial difficulties of LEAs and head teachers, with the continuation of some old contracts buttressing inhibitions against resolute managerial action in regard to those on new contracts. We do not recommend this route either.

Court decisions

9. It is difficult to see how a local authority could take action which would bring about a clarification through the courts of the extent of the obligation a teacher owes to his

employer. We think that it would be unwise to rely on a resolution of the contractual question emerging in this way.

10. There are two ways in which the matter might come before the courts. The first, and more likely, is that a teacher who had had deductions made from his pay for not performing a contractual obligation would seek a declaration from the High Court that the deduction was unlawful. Writs have, in fact, been issued against Doncaster and Rotherham Local Education Authorities. The decision of the court would depend on the question it is asked to adjudicate upon and how the matter is argued. Whilst it is possible that the judgment could give general guidance and contain helpful dicta, if the case were argued on the narrow question of whether or not a particular term could be implied, the judgment would be restricted to that question. In addition the decision might well be based upon an interpretation of the particular contract that applied to the particular teacher in question; such a decision might have little relevance to other teachers or local education authorities.

11. The second way the matter could come before the courts would be if a teacher were dismissed for a breach of contract. In that event, the teacher would probably bring a claim for unfair dismissal before an industrial tribunal. If such a claim were brought the tribunal would have to consider whether or not the dismissal was fair. Even if there had been a breach of contract the tribunal is required to go on to consider whether or not the employer acted reasonably in treating the conduct as a sufficient reason for dismissing the employee. A decision by an industrial tribunal would not be particularly authoritative. If there were to be an appeal to the Employment Appeal Tribunal or the Court of Appeal a more authoritative judgment would be obtained, but its scope might, as with an action for a declaration, be narrow.

12. There is, of course, the possibility that a court would find against the Local Education Authority. As to the timing of a decision, this would depend largely on the vigour with which the teacher pursued his case. In practice it might take up to a year for the case to come to court or to reach the Employment Appeal Tribunal.

New contracts by negotiation between employers and employees

13. The circumstances in England and Wales and in Scotland differ in some important respects, and this has made it impossible to reach an entirely common view.

14. In England and Wales it is doubtful whether new contracts along the lines favoured by the employers can be negotiated into place at all, because of NUT opposition. Such evidence as there is from the recent abortive negotiations suggests that, if this opposition were overcome, wholly satisfactory negotiated contracts on these lines could not be achieved at a long-term cost of less than 15 per cent. The review body reports, and our response to them, may nevertheless mean that we have to contemplate a substantial phased increase in exchange for tighter management and conditions of service.

15. In Scotland the programme of curricular and examination reform is already well under way, but is now seriously at risk. Implementation has both increased some teachers' workload and presented their unions with a very effective industrial weapon. It may therefore be worth paying a higher price in pay and resourcing than might otherwise be justified in order to secure important objectives to which the Government are committed. Although the EIS are at least as militant as the NUT, many of their members cannot relish a continuing stalemate in a dispute which has now been running for nine months. The Secretary of State for Scotland believes therefore that it would be worth paying an additional price, in low double figures but phased over several years - and skewed towards those teachers in the vanguard of curriculum development - in order to achieve a satisfactory outcome.

Conclusion

16. We doubt the wisdom and efficacy of seeking to impose new contracts on some or all teachers by legislation. There is a possibility of some illumination from the courts, though the prospects for that are uncertain and the timing is likely to be slow.

17. The Secretary of State for Education and Science sees little prospect of buying wholly satisfactory new contracts by direct negotiation between employers and employees at an acceptable price. A substantial phased increase may have to be agreed in exchange for tighter management and conditions of service. The Secretary of State for Scotland believes that in the context of the overall Scottish situation it would be worth pursuing further the possibility of achieving a solution on the lines indicated in paragraph 15.

18. We should continue to load pressure on LEAs to act resolutely as employers, publicise what we believe to constitute the teacher's professional duty and effectively challenge the unions to deny that and the employers to enforce it. In this we would be seeking to win over parents and public to the reasonableness of our position. We must also seek to bring pressure on LEAs and the teachers to act in accordance with our objectives in this area. Possible pressures are reviewed in the parallel paper.

STATEMENT OF TEACHERS' DUTIES

Teachers must

Pupils

1. teach assigned timetabled classes
2. take an appropriate share of collective staff responsibility to cover the classes of absent colleagues
3. plan, prepare, evaluate and review personal teaching methods and programmes in accordance with education authority and school policies
4. take an appropriate share of collective staff responsibility to supervise pupils on arrival at and departure from school and during the school day [including the midday break?]
5. mark, record and report on pupils' work (including homework) and progress in accordance with education and school policies
6. provide guidance and counsel on educational, social and (where appropriate) career matters in accordance with education authority and school pastoral and counselling policies

Parents

7. consult and liaise with parents, attending meetings arranged for the purpose

Curriculum & Examinations

8. take part in arrangements for presenting pupils in public examinations
- 9.* contribute to the preparation and development of courses of study and teaching materials in response to change in public examinations and assessment procedures and in accordance with education authority and school curricular policies

Staff Appraisal

- 10.* take part in performance appraisal in accordance with education authority arrangements
11. take part in courses of in-service training and other schemes of professional development
12. take an appropriate share of collective staff responsibility for the professional development of colleagues, including new entrants to teaching
13. attend staff meetings related to the preceding items outside timetabled hours

Catch-all

14. carry out such other related duties and responsibilities at the school as may be allocated, as need arises, by the head.

*In Scotland item 9 would extend to work "in accordance with national policies for developing the curriculum" and item 10 would not apply at present. Other minor changes would also be necessary.

PART OF A TEACHER'S MODEL CONTRACT

1. This part of the contract would define the duties to be performed. The figures in square brackets produce a 39 week year (one week specifically devoted to in-service training and other forms of staff development) and a 33 1/3 hour week with a maximum of 25 hours teaching. The remaining 8 1/3 hours are programmable over the whole year to be used at the heads' discretion for the duties listed 2-13 in Annex A.
2. A possible model formulation of this section is as follows:
 - i. "You shall act under the control of, and in accordance with the directions of, the headteacher and shall carry out such duties as may be assigned to you from time to time, and which will be incorporated in a job description [to form part of this contract], from amongst those listed below (a list along the lines of Annex A would then appear).
 - ii. Except for duties 3 and 5, which cannot be constrained within a fixed weekly or annual limit but the performance of which nevertheless remain subject to appraisal, the total time during which you shall act under the headteacher's control shall not exceed [1,300] hours a year spread over a maximum of [195] days.
 - iii. Your weekly class contact timetabled under item 1 shall not exceed [25] hours [leaving 8 1/3 hour "programmable" time which can be spread over the 39 weeks at the head's discretion and used for the performance of the 13 other duties but subject to the limits at iv and v below.]
 - iv. You shall be entitled to a minimum of [1 1/3] unassigned hours per week when you cannot be required to perform duty 2.
 - v. You shall be free from all responsibilities during the pupils' midday break [except ... provision could be made to provide a supervision roster if midday supervision were to be a contractual obligation.]".
3. Other parts of the contract would need to cover commencement date, and provisions relating to salary determination, probation, notice, sick pay etc etc none of which are at issue in this paper.

ASSESSMENT SECTIONS

Each section contains a number of sub-sections with prompt headings to assist in identifying areas of discussion: they are intended to guide but not constrain discussion and do not constitute an exhaustive list. They are drawn from and relate to the "duties and responsibilities envisaged for the Entry Grade Teacher". Some of the headings and areas of discussion will be more relevant in the later stages of the period of service on the entry grade.

SECTION 1.10 TEACHING/LEARNING

- 1.11 PREPARATION - learning objectives for class/group
- concepts
 - progression
 - experience/stimulus range
 - use of available/appropriate resources
 - relationship to school/departmental syllabus
 - homework scheme
- 1.12 METHOD
- range of teaching strategies
 - pace of lessons/ability to adjust content and style
 - language/vocabulary
 - use of question/answer skills
 - organisation of group/material
 - control and discipline (including outside teaching situation)

SECTION 1.20 PUPIL ASSESSMENT/RECORDS/TUTORIAL AND PASTORAL CARE

- 1.21 PUPILS
- Marking/use of test materials and assessment
 - Testing aims of/range of/appropriateness of record keeping
 - Awareness of response to:
 - Social and Personal development
 - Special Needs
 - Involvement in pastoral programme
 - Feedback METHOD (1.12)
- 1.22 PARENTS
- report writing to
 - advice offered
- 1.23 LIAISON WITH OTHER AGENCIES (CAREERS, WELFARE, ETC.)

SECTION 2.00 WORKING AS A MEMBER OF THE STAFF OF THE SCHOOL2.11 AS PART OF A TEAM

- participation in syllabus preparation
- opportunity for and contribution to policy formulation
- team teaching and/or other cooperative strategies
- accepting delegated responsibility
- role in working parties, etc.

2.12 AS AN INDIVIDUAL

- management of:
 - own work time
 - resources (including ancillaries)
 - systems
- self evaluation skills/reviewing effectiveness

SECTION 3.00 CONTRIBUTION TO THE GENERAL LIFE OF THE SCHOOL

3.11 GENERAL AIMS AND OBJECTIVES

- awareness of school's place in the community
- contribution to furthering the schools aims/objectives
- contribution to school order/discipline

3.12 CURRICULUM - Awareness of:

- totality of school curriculum
- cross curricular links
- developments in wider fields
- evaluation techniques

SECTION 4.00 RESPONSE TO INDUCTION

4.11 OPPORTUNITIES - use of time available from lightened teaching load

- use of in-service training opportunities
- relationship to/use of mentor

4.12 SUPPORT - response to support/supervision

SECTION 5.00 SUGGESTIONS FOR FURTHER PROFESSIONAL DEVELOPMENT

5.11 FURTHER TRAINING - classroom management

- subject knowledge
- relationships

5.12 EXPERIENCE NEEDED - visits other schools

- exchange posts
- course type/nature

5.13 OTHER SUGGESTIONS -

SECTION 6.00 ASSESSMENT OF PROGRESS

6.11 What response have the teacher and the school made to the last assessment? What significant improvements have taken place and/or major problems have not been addressed.

6.12 Other observations which are relevant, but not raised under other headings.

TEACHER ASSESSMENT PROFILE

SUMMATION RECORD

| | INDICATORS | COMMENTS | SUMMARY |
|--|------------|----------|---------|
| <p>1.10 <u>TEACHING/LEARNING</u></p> <p><u>ITEMS</u> 1.11 PREPARATION</p> <p>1.12 METHOD</p> | | | |
| <p>1.20 <u>PUPIL ASSESSMENT/RECORDS AND TUTORIAL AND PASTORAL CARE</u></p> <p><u>ITEMS</u> 1.21 PUPILS</p> <p>1.22 PARENTS</p> <p>1.23 LIATSON WITH OTHER AGENCIES</p> | | | |

2.00 WORKING AS A MEMBER OF THE
STAFF OF THE SCHOOL

ITEMS

2.11 AS PART OF A
TEAM

2.12 AS AN
INDIVIDUAL

3.00 CONTRIBUTION TO THE GENERAL
LIFE OF THE SCHOOL

ITEMS

3.11 GENERAL AIMS
AND
OBJECTIVES

3.12 CURRICULUM

| INDICATORS | COMMENTS | SUMMARY |
|------------|----------|---------|
| | | |
| | | |

4.00 RESPONSE TO INDUCTION

| | INDICATORS | COMMENTS | SUMMARY |
|--|------------|----------|---------|
| <p><u>ITEMS</u> 4.11 OPPORTUNITIES</p> <p>4.12 SUPPORT</p> | | | |
| <p>5.00 <u>FUTURE PROFESSIONAL DEVELOPMENT SUGGESTIONS</u></p> <p><u>ITEMS</u> 5.11 FURTHER TRAINING</p> <p>5.12 EXPERIENCE NEEDED</p> <p>5.13 OTHER SUGGESTIONS</p> | | | |

6.00 ASSESSMENT OF PROGRESS

6.11 Response to last assessment (by teacher and school)

6.12 Any other observations which are relevant but do not fit under previous headings:

7.11 SUMMARY OF PROGRESS

Year(s) (1) (2)

- PROGRESS -
1. Making good progress through E.G.
 2. Satisfactorily meeting reasonable expectations at this stage of the E.G.
 3. This area needs particular attention.

| AREA OF WORK | | PROGRESS (enter 1, 2, or 3) | COMMENT |
|---|-----------------------------|--------------------------------|---------|
| TEACHING/LEARNING | Preparation | | |
| | Method | | |
| PUPIL ASSESSMENT /CARE | Pupils | | |
| | Parents | | |
| | Liaison with other agencies | | |
| WORKING AS MEMBER OF STAFF | As part of team | | |
| | As an individual | | |
| CONTRIBUTION TO GENERAL SCHOOL LIFE | Aims and Objectives | | |
| | Curriculum | | |
| RESPONSE TO INDUCTION | Opportunities | | |
| | Support | | |

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7.12 OVERALL ASSESSMENT OF PERFORMANCE AND POTENTIAL

- This summary should
- (1) Comment on the overall development and effectiveness of the teacher assessed in the context of the school and LEA.
 - (2) Comment particularly on matters of concern outstanding from previous assessment.
 - (3) Contain positive and specific recommendations to assist development of teacher towards MPG.

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- 7.14 (a) Teacher should progress towards next year of Entry Grade Training YES/NO
(b) Teacher is recommended for entry to MPG YES/NO
(for completion in final year only)

SIGNATURE _____ POSITION _____ DATE _____

Confirmation that "Assessment Profile" seen:

SIGNATURE OF TEACHER _____ DATE _____

Comment/reservation (if any) by teacher

Signature of Teacher _____ Date _____

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SCHOOL TEACHERS: LEAs AND GOVERNMENT OBJECTIVES

Note by the Secretaries of State for Education and Science and for Scotland.

We were invited, in consultation with the Secretary of State for the Environment and the Chancellor of the Exchequer to consider how pressure could be put on local education authorities, whether through the allocation of RSG funds or in other ways, to act in accordance with Government objectives, and to report back (conclusion 3 of record of 1 May meeting).

Objectives

2. Government objectives, for this purpose, include improved teacher contracts and more resolute employer enforcement of contracts; educational advance, including the continuing development of curriculum and examinations; and improved management of the teacher force, linked with regular and systematic appraisal of teacher performance (in England and Wales) and the intended new in-service training arrangements. In addition we wish to continue to impose restraint on local authority expenditure in general and, as school rolls fall, in expenditure on education in particular.

Financial powers

3. As noted on 1 May, discrimination among local authorities in the distribution of grant on a judgemental basis would require new primary legislation. The Local Government, Planning and Land Act 1980 requires that a local authority's grant-related poundage and grant-related expenditure must be determined in accordance with principles to be applied to all authorities.

4. Within existing legislation we could not use any of the penalties now applied to block grant for the new purpose of insisting that LEAs act in particular ways in relation to the employment of teachers. The use of multipliers is defined

in Section 59 of the 1980 Act and Section 8 of the Local Government Finance Act 1982. Although the 1980 Act appears to give the Secretary of State carte blanche - it says that multipliers may be used for "any other such purpose as the Secretary of State may determine" - the DOE view is that the courts would not uphold their use other than for purposes similar to those already specified in the Act eg safety nets and London discounts. Hence the legislation in 1982 for holdback penalties for non-compliance with expenditure guidelines. In Scotland the legislation is different, but the general problem is the same. The method of distributing RSG could not be used to secure compliance with objectives in a particular service.

5. Within existing legislation, the most effective device for influencing the employers and the teachers in England and Wales towards our objectives appears to be a conditional increase in local authority relevant expenditure and aggregate exchequer grant, only to be delivered once employers and teachers have entered into firm national agreements to effect desired changes in practice. The earlier (E&W) proposal to seek to improve performance by increasing the proportion and availability of promoted posts for effective teachers was of this kind. It appears that, for such a device to be compatible with the machinery for operating rate limitation, it would be necessary for such agreements to be made no later than the October preceding the relevant financial year, though it might be possible to deal with a later agreement provided that the increase in aggregate exchequer grant was 100% of the increase in relevant expenditure, which in turn fully covered the increased cost of the deal. However, in the latter case, it would be necessary to explore further the possible legal consequences for rate limitation of reopening the RSG settlement in this way. In Scotland, although rate limitation does not arise, the same timetable problems exist.

6. Another possibility is to take a new specific grant power by which we might effectively discriminate in the use of grant to secure implementation of our objectives. However, apart from Scotland where such specific grant power already exists, the need to legislate would mean that the first possible year for discriminating in this way would be 1987/88. As in paragraph 5 above, local authority relevant expenditure would be increased by an appropriate amount and a matching sum added to Aggregate Exchequer Grant, on condition that LEAs demonstrated their willingness collectively to adopt our declared objectives. We judge that only the prospect of new money will enable the achievement of that objective. However the specific grant could then be used to distribute grant to LEAs in accordance with their degree of compliance to our objectives.

7. It would then be possible both to promote compliance by all LEAs collectively in the negotiation of more discriminating pay arrangements and to direct grant to individual LEAs on the basis of improved local arrangements for teacher management, including resolute enforcement of teacher contracts or teacher appraisal arrangements. In Scotland the grant could be tailored to the extent to which education authorities were able to deliver the revised courses for 14-18 year olds in their schools: that would give authorities a powerful incentive to put pressure on their teachers to prepare new courses and teaching materials, and encourage moderate teachers to resume cooperation with the reforms in return for more generous staffing and equipment in those schools which delivered the revised courses.

8. In order to reconcile the operation of the new power with rate limitation, decisions on total relevant expenditure and on grant would be needed by no later than October in the financial year prior to the year in question or else it would be necessary to set the rate of specific grant at 100% to avoid the real risk of a successful court challenge from rate-capped LEAs. But setting the grant at a high rate both increases the financial leverage on LEAs and provides a real deterrent

to failure to comply with our objectives. A loss of grant associated with expenditure equivalent even to 5% of the teachers' pay bill would constitute powerful pressure on individual LEAs to fall into line.

9. Such a specific grant would be strongly opposed by the local authority associations in England and Wales and there would be consequences for central and local government manpower. We would have to wait until 1987/88 before we could operate such a grant. Moreover we should recognise that while the pressure on LEAs would be high, that would not necessarily extend to teacher unions in ways which would deliver their co-operation. An extension of specific grants might also be opposed in Scotland, although a grant confined to assisting curriculum reforms might be welcomed by some authorities in Scotland.

10. The Secretary of State for Employment is considering action which might help to counter selective strike action. On the specific point concerning the practice of deducting only one 365th of a year's pay for each Tuesday, Wednesday or Thursday of strike action it should be noted that (a) this is based on the existing nationally agreed conditions of service for school teachers and (b) the same practice applies to monthly salaried civil servants and to white collar NHS staffs. It would be difficult to change this position by negotiation with the teacher unions or by legislation applying only to school teachers.

11. In the parallel paper on contracts we come down against primary legislation to impose new forms of contract and conclude that we should not expect much to be achieved through the courts to clarify existing contracts. In this paper we note the limitations of existing RSG legislation in England and Wales for bringing pressure on individual authorities to achieve our objectives. Legislation to provide new specific grant powers could be effective, but would be highly controversial and take time.