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P 02997

PRIME MINISTER

EDUCATION REFORM BILL: HIGHER EDUCATION PROVISIONS

E(EP)(88)2

DECISIONS

The Sub-Committee need to decide whether to offer concessions on the Education Reform Bill's provisions on higher education, in the light of opposition from university interests. Mr Baker proposes concessions in response to three main criticisms:

i. that the Bill gives the Government excessive power over the Universities Funding Council (UFC) and, through the UFC, over individual universities. He proposes the five concessions in paragraph 6 of his paper;

ii. that the Bill denies the UFC the right to advise the Government on the financial needs of the universities. He proposes to put a duty on the UFC to advise him, subject to agreement with him about the manner in which the advice is conveyed (eg whether it is published);

iii. that the end of tenure will compromise academic freedom. He proposes to make no concession at present, but to undertake to consider carefully any specific amendments.

2. You might like to take the discussion in two parts.

i. What concessions need to be made. Mr Baker's package offers relatively minor changes while retaining all the basic powers in the Bill. You may agree; or you may feel that some more substantive concession should be made to the criticism that the Bill gives the Education Secretary too much power; or you may wish to stand firm at present.

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ii. The timing of any concessions. Mr Baker proposes to put down amendments as soon as possible. However the most effective opposition is likely to be in the Lords. There may be some risk that if concessions are made now, they will merely pave the way for pressure for further concessions in the Lords. It might be better to hold at least some concessions in reserve. You will want to seek the advice of the business managers.

BACKGROUND

3. Following the Croham Report ("Review of the University Grants Committee") the Higher Education White Paper announced the Government's intention to reconstitute the non-statutory University Grants Committee (UGC) as a smaller, statutory UFC with executive responsibility for allocating funds between individual universities. Similar proposals were made for a Polytechnics and Colleges Funding Council (PCFC). Although opposition has centred on the UFC proposals, Mr Baker's proposed concessions extend to the provisions for the PCFC which are largely identical.

MAIN ISSUES

4. There appear to be three main approaches which the Government could adopt in response to opposition to the Higher Education provisions of the Bill.

i. It could stand firm, at least for now. This would leave open the possibility of concessions in the Lords.

ii. It could offer a package of fairly minor concessions, while leaving intact the key powers for the Education Secretary to impose conditions on the use of funds by the UFC and PCFC and to give them directions. This is the approach Mr Baker favours.

iii. It could offer a substantive concession, probably by way of restrictions on one or both of those key powers.

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Mr Baker argues that it is essential to keep the powers both to issue directions and to impose conditions, subject to his proposed amendments, and argues that the critics ignore his very wide powers under the existing, non-statutory UGC regime. The Sub-Committee will nevertheless wish to consider whether either of the other alternatives presents a better way forward. In considering this, they will want to know what amendments the Committee of Vice-Chancellors and Principals (CVCP) have put forward, and what the difference is between them and Mr Baker's proposed concession. The paper does not set this out at all.

Proposed concessions

5. If the Sub-Committee agree with Mr Baker's general approach, you will want to consider the detailed amendments which he proposes:

i. to prevent the Bill's powers being used to affect the use to which a university, polytechnic or college puts its private funds. This seems reasonable;

ii. to make the Education Secretary's power to direct the UFC and PCFC subject to the negative resolution procedure in Parliament. Directions are intended to be used in exceptional circumstances, and a role for Parliament seems reasonable. But could this concession lead to pressure for affirmative resolution, especially in the Lords?

iii. to provide that the Education Secretary's power to attach conditions to UFC and PCFC funding could not be used to discriminate between named universities etc. It is possible to envisage circumstances in which this could restrict the Government (as opposed to the UFC) from pursuing its policies, eg of encouraging a few centres of excellence in a particular subject. But the power to give directions could still be used for this purpose in extremis;

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iv. to restrict the scope of extra functions which can be imposed on the UFC and PCFC by order to those exercisable by the Education Secretary, and which are consistent with the councils' general character. This seems reasonable. Would a further concession be to make the conferment of extra functions subject to Parliamentary procedure?

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v. to drop the power for the UFC and PCFC to require repayment of funds if conditions of grant are breached. This seems a questionable change: the implication is that the conditions can be ignored with impunity, and it is difficult to see how the universities can argue that this is reasonable. Mr Baker says that the Funding Councils will be able to dock the money from future payments. But presumably this would require specific provisions in the Bill, which would be no less controversial. You may wish to query this proposal;

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vi. to introduce a new duty on the UFC and PCFC to advise on the financial needs of the institutions, subject to agreeing the manner in which advice is to be conveyed. This would reverse a specific decision taken at H on 11 March 1987 (H(87)3rd Meeting). The risk is that the UFC and PCFC will become lobbies for additional funding, a danger recognised in the Croham Report. You will want to be sure that the provisions Mr Baker proposes on the form of UFC and PCFC advice limit this risk to an acceptable level. You may in particular want to ask:

a. why there has to be a specific reference to advice on the 'needs of the institutions' (paragraph 11). Although the Secretary of State does not want the UFC to lobby publicly for more money, might this not be almost an invitation to lobby?

b. how he will justify the requirement on the Councils to agree with the Secretary of State the manner in which the advice is to be conveyed. Could he defend it on the

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real ground for inserting it, that it could prevent publication?

vii. Mr Baker makes no specific proposal on academic freedom. You will probably want to ask him to consult colleagues again before agreeing to any proposal put forward during the Bill's passage.

Timing

6. If you agree on concessions, you will need to consider when they should be made. Mr Baker wishes to table amendments during Commons Committee. However the most effective opposition is likely to be in the Lords, and it might be best to keep at least some concessions back until then. Otherwise the Government might be forced to make further and more damaging changes in the upper house. You will want to take the advice of the business managers.

VIEWS OF OTHER MINISTERS

7. The Paymaster General is likely to be most concerned about the risk that the UFC and PCFC will become lobbies for additional Government expenditure on Higher Education. He may therefore resist the proposed duty on the two councils to give advice. The Secretaries of State for Wales and for Scotland are both likely to support Mr Baker's proposals, although they may express doubts about whether they will be sufficient to satisfy the critics.

HANDLING

8. You will want to ask the Education Secretary to introduce his Memorandum. The Secretaries of State for Scotland and Wales may wish to comment, as may the Paymaster General. You will want the business managers' views on the timing of any concessions.

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Cabinet Office

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