

PRIME MINISTER

OPTING OUT IN SCOTLAND

Mr. Rifkind is coming to see you tomorrow, at your request, about opting out schools in Scotland.

The background to the discussion is my minute at Flag A, which describes Mr. Rifkind's position on this matter. I subsequently sent to his office the letter at Flag B (which, together with an earlier letter, was leaked).

The position on opting out in Scotland is as follows:

- (i) it is agreed that opting out will not be included in this session's Bill;
- (ii) you have suggested that the Secretary of State should consider what would be involved in terms of legislation for introducing opting out in Scotland, including the use of an order making powers which would bring the legislation into effect some time after it had reached the statute book;
- (iii) Mr. Rifkind has not yet accepted that next session's Scottish education legislation should include such a power. He will shortly be having consultations with the Catholic hierarchy since he believes their attitude to be crucial;
- (iv) Mr. Allan Stewart has tabled a clause (Flag C) to this session's Bill which provides for a scheme for opting out. While it is accepted that the Government will not support this clause, we need to agree Scottish Office Ministers's line on what to say in the debate on the clause about including provisions for opting out in next session's legislation.

cc B/C

When I spoke to Mr. Rifkind, he told me that he wished to see opting out introduced in Scotland. But he did not say when, and he clearly is bent on proceeding cautiously. I suggest that at this meeting you:

- discover his intentions for opting out;
- ask what he intends to say in response to Mr. Stewart's amendment;
- press him to include opting out legislation in next session's Bill; and
- ask him to circulate proposals to E(EP).

N.L.W.

N. L. WICKS

19 April 1988

SL2APD

cc BUP

PRIME MINISTER

OPTING-OUT IN SCOTLAND

Following your talk with Brian Griffiths this morning, I am minuting about how we should proceed with opting-out in Scotland.

Mr. Rifkind told me earlier in the week that he had been surprised by my letter (at Flag A) about opting-out in Scotland. His reaction is not unexpected since the purpose of my letter was in fact to discover his intentions.

Mr. Rifkind said that my letter read too much into his intentions. As yet there had been no policy discussion, let alone approval, of opting-out in Scotland. He personally favoured opting-out, in due course. But he believed, strongly, that too early introduction would cause grave political difficulty in Scotland. He then went on to elaborate his views as follows:

- (i) The Scottish Manifesto had set out the Government's plans for education in Scotland (Flag B) and had not referred to opting-out. Indeed, he had the impression that following agreement in Lord Whitelaw's Election Committee on Questions of Policy, Conservative spokesmen at the General Election had explicitly excluded opting-out in Scotland for this Parliament (though we have not yet traced any references to this). The slower approach in Scotland compared to England reflected the lack of any constituency in Scotland pressing for opting-out. Until school boards were created, such a constituency was unlikely to form.
- (ii) He had experienced great difficulty in securing a political consensus among Scottish Conservatives for this Session's Bill establishing school boards. Alick Buchanan-Smith and Hector Monro, as well as some leading Conservatives in local authorities, had initially been reluctant to back the bill. But a

No. He just has to justify government's plan.

constituency had now been formed in favour of the change. Mr. Rifkind feared that an early announcement (eg when Allan Stewart tabled his amendment for opting-out to this Session's Bill) that the Government were intending to introduce opting-out legislation next session could strain the political consensus he had created in the Scottish Conservative Party and cause difficulty for this Session's Bill.

(iii) If opting-out was to be introduced in Scotland, and Mr. Rifkind assured me that this was his ultimate intention, he needed to demonstrate that there was public pressure for the change. Otherwise he could not explain why the Government had now decided to introduce opting-out when it had ruled it out in the Election campaign. There had been some straws in the wind that the Catholic hierarchy, whose opinions were crucial here, were not necessarily opposed to opting-out - they might see it as a way of buttressing their authority against unreasonable demands of some Labour authorities. He was therefore going to explore with the Scottish Catholic Archbishops in April their attitude to opting-out. This discussion would take place well before the House debated Allan Stewart's clause.

But there is in respect of certain schools

(iv) Summing up his views Mr. Rifkind said that his priority was to secure a smooth enactment of this Session's School Boards Bill. The political reality in Scotland was that early announcement of the Government's intention to legislate next Session for opting-out would be counterproductive. He therefore wanted to retain an open mind about next Session for the time being.

I made the following points to Mr. Rifkind. First, you were extremely keen that parents and children in Scotland should have the benefits of opting-out which would soon be available to parents and children south of the border. Second, you had suggested an approach to him which ought to help him with his political difficulties. This was that the next Session's

legislation providing for opting-out should not take immediate effect, but would only be triggered when the Secretary of State laid the appropriate order before Parliament. This would give parents an incentive to plan for opting-out yet enable the Secretary of State to meet any criticism of undue rush; and when he laid the order triggering the operation of the opting-out legislation, he could say that he was acting in response to parents' requests. But the important first point was to get the legislation on the statute book.

Mr. Rifkind asked whether he might report to you with a view to a discussion, after he had discussed the issue with the Catholic Archbishops in April; and that meanwhile no decision should be taken on what would be said in reply to Allan Stewart's amendment or on the contents of the Scottish education legislation next Session.

Mr. Rifkind is clearly reluctant to make quick progress on opting-out. Before too long this issue will need to be discussed by Ministers collectively. But first I think you need to talk the matter through in more detail with Mr. Rifkind. The meeting need not take place until after Easter. Meanwhile Brian Griffiths intends to see whether he can find out more about the political background to this issue in Scotland. So if you agree I would propose to tell Mr. Rifkind:

- You would like to talk to him after Easter. You think that there will need to be a discussion in E(EP) before too long (probably after his talk with the Catholic hierarchy) if only to settle the government's line on Allan Stewart's amendment. Meanwhile Mr. Rifkind should consider what would be involved for opting-out in Scotland, including the use of the order-making power described above which would trigger the operation of the legislation.

Agree to proceed in this way?

N. L. Wicks

18 March 1988

Yes Mr.