



PRIME MINISTER

EDUCATION REFORM BILL: PROVISION FOR FURTHER EDUCATION  
STUDENTS WITH SPECIAL EDUCATIONAL NEEDS (SEN) *attached*

1. E(EP) considered this issue last summer (E(EP)87)2nd Meeting) and decided against legislating to impose additional duties on LEAs in respect of FE students with SEN. I am not now seeking to reopen that question. I wish however to obtain your and colleagues' agreement to the tabling at Report Stage in the Lords of a nil-cost Government amendment to clarify the point that the LEAs' duties in relation to FE in the Bill include provision for students with SEN.

2. This would not add to the effect of the Bill, since the duty imposed on LEAs under section 41 of the Education Act 1944 as substituted by Clause 112(2) of the ERB covers all FE students whether with SEN or not. It should, however, help to disarm some of the Government's critics in this area and thus help to secure the passage of the relevant part of the Bill.

3. During Committee Stage in the Lords we were faced with a number of amendments on FE(SEN), some of which would have required additional expenditure. Most had attracted cross-party support. Gloria Hooper managed to persuade Lady Kinloss and her colleagues not to move the amendments in question on the basis that the Government would reconsider its position. I have now done so, and have concluded for a variety of reasons that we should continue to resist the amendments. I feel bound however to offer something to show that the Government recognises the existence of students with SEN. While it is not certain that the kind of amendment I am suggesting will be sufficient to disarm all criticism, it would come near one of the amendments not moved in Committee

(No 236C, tabled by Baroness Faithfull and Lord Carter). It would therefore represent a gesture of goodwill on the Government's part.

4. In preparing instructions for Parliamentary Counsel we have stressed the need for a form of words which will not place LEAs under an obligation to incur additional expenditure. On that basis can I have colleagues' agreement to proceed in the way I am suggesting, with a view to tabling an amendment on 21 June 1988?

5. I am copying this to other members of E(EP) and to Sir Robin Butler.

K.B.

KB  
Department of Education and Science

10 June 1988

CCS



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*Oddi wrth Ysgrifennydd Gwladol Cymru*

The Rt. Hon. Peter Walker MBE MP

WELSH OFFICE  
GWYDYR HOUSE  
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Tel. 01-270 3000 (Switchboard)  
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*From The Secretary of State for Wales*

22 June 1988

*nbpm*

*P. Kenneth*

**EDUCATION REFORM BILL: PROVISION FOR FURTHER EDUCATION (FE) STUDENTS WITH SPECIAL EDUCATIONAL NEEDS (SEN)**

*at Prop.*

I have seen a copy of your minute of 10th June to the Prime Minister and agree with your proposal to table a nil-cost amendment at Lords Report Stage to make clear the duty of LEAs to provide for FE SEN students.

Copies of this go to the Prime Minister, other E(EP) members and Sir Robin Butler.

*[Large handwritten signature]*

The Rt. Hon. Kenneth Baker MP  
Secretary of State for Education and Science  
Elizabeth House  
York Road  
LONDON  
SE1

ED<sup>n</sup>: poly pt 19.



NBM at his stage

R216  
r/b

*From the Government Chief Whip  
House of Lords*

21 June 1988

*Dear John,*

R2216

EDUCATION REFORM BILL: PROVISION FOR FURTHER EDUCATION FOR STUDENTS WITH SPECIAL EDUCATIONAL NEEDS (SEN)

I have seen your letter to Kenneth Baker on his proposal for a Government amendment at Report. In your letter you say that you would only agree to such an amendment were I to judge that it was necessary to avoid the risk of something worse. While I cannot possibly predict defeat with any certainty, I have to say that this is the kind of subject area which appeals to the Cross-Benchers and where the Government could, therefore, well suffer defeat. We know Cross-Benchers expect some action on the part of Government following Committee. Gloria Hooper tells me that amendments similar to those put forward at Committee have now been tabled for Report. I understand that Kenneth's proposal would largely confirm what already takes place consistent with the rather general provisions of the 1944 Act, rather than create any new obligations. While I agree with you that it may well prove to be rather more than nil-cost in its effect, the alternatives on the Order Paper - particularly amendment 369 - if agreed to by the House, look as though they might be uncomfortably more expensive.

On balance, I think I would prefer to see a Government amendment tabled on the lines proposed by Kenneth as soon as possible so as to defuse some of the criticism we shall endure on this. John Belstead with whom I have discussed your letter agrees with this assessment.

I am sending a copy of this letter to the Prime Minister, Members of E (EP) and to Sir Robin Butler.

*Yours ever*

*Denis*

DENHAM

John Major Esq MP



NBRM

RCCB  
16/6

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Kenneth Baker MP  
 Secretary of State for Education  
 Department of Education and Science  
 Elizabeth House  
 York Road  
 London  
 SE1 7PH

16<sup>th</sup> June 1988

Dear Secretary of State,

**EDUCATION REFORM BILL: PROVISION FOR FURTHER EDUCATION FOR STUDENTS WITH SPECIAL EDUCATIONAL NEEDS (SEN)**

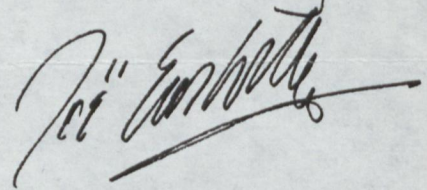
Thank you for copying to me your minute of 10 June to the Prime Minister, seeking agreement to tabling a Government amendment to the Bill at Lords Report stage to clarify that LEAs' duties in relation to FE extend to students with special education needs (SEN). *with R?*

I recognise that your latest proposal is significantly more modest than your earlier one to extend the 1981 Act to FE colleges, and that LEAs will not as a result be required to incur additional expenditure. Nevertheless, the estimates produced by your department last year, of the costs of what you then proposed, demonstrate an element of suppressed demand for provision for 16-19 year olds with SEN. The effect of the amendment you are now proposing will therefore almost certainly be to increase the pressure on LEAs to make some additional provision available even if not on the scale of the £12.5 million which you estimated would be the cost of extending the 1981 Act. I should therefore prefer to avoid, if at all possible, even the limited concession you are now proposing. I would only agree to it, and then very reluctantly, if in your and Bertie Denham's judgement it represents the only means of avoiding a significant risk of defeat on a more damaging amendment.

Subject to that, we should also need to be satisfied that your proposed amendment could not be interpreted as having the same effect as extension of the 1981 Act; I understand you are taking legal advice on that. And it would need to be made clear to LEAs that expenditure on FE as a result of clause 112 of the Bill will need to be accommodated within planned provision.

I am copying this letter to the Prime Minister and other members of E(EP), to Bertie Denham and to Sir Robin Butler.

Yours sincerely,



for

JOHN MAJOR

(Approved by the Chief Secretary  
and signed in his absence)

PRIME MINISTER

PROVISION FOR FURTHER EDUCATION STUDENTS  
WITH SPECIAL EDUCATIONAL NEEDS

Mr. Baker's minute of 10 June seeks agreement to tabling an amendment to the Education Bill "to clarify the point that LEAs' duties in relation to further education include provision for students with special educational needs".

Mr. Baker claims that this would be a nil cost amendment, and would not in practice add to the present effect of the Bill. But he thinks it will help to get through a difficulty in the Lords.

I am bound to say I think Mr. Baker is trying to be all things to all men, particularly as he told E(EP) last year that "no statutory duty exists requiring LEAs to provide for special educational needs for further education colleges".

You might therefore want to respond by asking:

1. Is he sure that the proposed amendment would add nothing to the effect of the Bill, given what was said last year?

2. Is he confident that the amendment would indeed be "nil cost", particularly as he was concerned about expense when he brought this issue to E(EP) last year.

*It would of course cost quite a bit. not*

Content to respond in this way, or do you want to accept Mr. Baker's proposal without comment?

PP PG Patricia A. Parlane  
Duty clerk

15 June, 1988



CONF

SH



CBG

10 DOWNING STREET  
LONDON SW1A 2AA

From the Private Secretary

16 June 1988

Dear Chris,

**PROVISION FOR FURTHER EDUCATION STUDENTS  
WITH SPECIAL EDUCATIONAL NEEDS**

The Prime Minister was grateful for your Secretary of State's minute of 10 June.

The Prime Minister recalls that E(EP) were told last year that no statutory duty existed requiring local education authorities to provide for special educational needs for further education colleges. She therefore wonders whether it is strictly true to say that the amendment your Secretary of State envisages would add nothing to the effect of the Bill. In consequence she is not persuaded that the amendment would have a nil cost. The Prime Minister would be grateful for your Secretary of State's further comments on these points.

BF 11

I am copying this letter to the Private Secretaries to members of E(EP) and Trevor Woolley (Cabinet Office).

Yours,  
Paul

PAUL GRAY

Chris de Grouchy, Esq.,  
Department of Education and Science

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P.A.

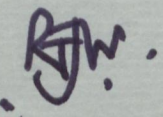
From: R T J Wilson  
14 June 1988

P 03139

MR GRAY

EDUCATION REFORM BILL: PROVISION FOR FURTHER EDUCATION OF  
STUDENTS WITH SPECIAL EDUCATIONAL NEEDS

1. I promised to let you see Mr Monger's comments on Mr Baker's minute of 10 June.
2. The basic point is that it is not easy to square what Mr Baker is saying now with what he said in a paper to E(EP) a year ago. The point is not a major one and there may well be a reasonable explanation. But if you felt that you wished to pursue it, it would seem to us quite reasonable to ask:
  - i. whether it is correct that his proposed amendment would add nothing to the effect of the Bill, given that E(EP)(87) 4 said that no statutory duty existed requiring LEAs to provide for special educational needs in colleges of further education; and
  - ii. whether he is now confident that the amendment would indeed be "nil cost", given that he was concerned about expense when he raised this issue a year ago.

  
R T J WILSON



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Reference No: E0578

MR WILSON

Education Reform Bill: provision for  
further education students with  
special educational needs

I suggest that the Prime Minister needs to know more about the proposal Mr Baker makes in his minute dated today.

2. Last year Mr Baker said that 'no statutory duty exists requiring LEA's to provide for special educational needs in FE colleges'. (Appendix 1 to Annex B of E<sup>EP</sup>(~~EP~~)(87)4) Although LEA's in fact made such provision it was probably ultra vires. He proposed that the vires should be put beyond doubt and also that LEAs should be put under a new set of duties in relation to SENs like those applied to schools under the Education Act 1981. He argued that if the Government simply clarified the law without also applying the 1981 extension it would 'certainly come under strong pressure from the special needs lobby and from a number of LEAs on grounds of a breach of faith'.

3. These proposals were withdrawn partly because of Treasury fears that they would lead to extra expenditure. E(EP) concluded that there should be no provision on SENs in the Bill.

4. Against this background, the following questions arise on Mr Baker's new proposals:

- Why does he now say that it would add nothing to the effect of the Bill to include an amendment to make it clear that LEA's duties in relation to FE include provision for students with SEN? On the face of it, either it was wrong to say last year that this provision was probably ultra vires; or something has already been put in the Bill, despite E(EP)'s decision that nothing should be done on SEN's.

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- How does the amendment stand in relation to the argument Mr Baker advanced last year that the Government would be criticised if it introduced any legislation on SENs which did not also apply to LEAs the extra, and expensive, duties applied to schools by the 1981 Education Act?

5. I suggest that at this stage these questions could be put neutrally. There could be a good explanation - or the new proposal could be an attempt to reverse last year's decision.

G W MONGER

Economic Secretariat

10 June 1988.

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