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P 03172

PRIME MINISTER

Education (Scotland) Bill

E(EP)(88)14

DECISIONS

Mr Rifkind is seeking policy approval for his Education (Scotland) Bill, which is due to be introduced in November. The two main issues arising from his paper are:

i. is the proposed negotiating machinery for Scottish teachers pay sufficiently stringent? In particular, should the Government be able to impose a settlement, in the absence of agreement, without necessarily having to go to arbitration first?

and
testing
-see Brian's
note
ii. should the bill contain powers to let schools opt out of local authority control?

2. Mr Baker and the Chief Secretary are expected to suggest that this bill is of relatively low priority, and that its place in the 1988-89 session should be given to a Bill on student support. However, the business managers are likely to point out that a Student Support Bill would be considerably more controversial than this Bill, so that with the heavy programme already agreed it would not be wise to substitute the one Bill for the other. The balance of argument may be affected by what you decide should go in a Scottish Bill. You may therefore wish to decide first what the content of the Bill should be and then turn to its place in the programme.

see
also
Nigel's
note.

BACKGROUND

3. The present negotiating machinery for Scottish teachers pay is unsatisfactory. Settlements have been high recently as the management side has been under local authority control. This year the settlement was 6%, when the Interim Advisory Committee for England and Wales had been limited to 4 1/4%. Cabinet agreed in

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March that the 1988-89 legislative programme could include a Bill to reform the Scottish negotiating machinery, and to make a number of less controversial improvements to legislation governing Scottish education. This Bill is expected to have about 25 clauses. The full list of its proposed provisions is in the annex to Mr Rifkind's paper.

4. In March you pressed Mr Rifkind to agree that opting out should be extended to Scotland, and asked him to bring proposals to E(EP). He has been reluctant to do so. His paper merely says that he is still considering this proposal. Correspondence between your office and his on opting out was leaked at the end of March. Mr Rifkind subsequently agreed with you a public line that the case for opting out would be assessed in the light of the interest expressed by Scottish parents.

ISSUES

Negotiating machinery for Scottish Teachers' Pay

5. The main issue here is whether the arrangements proposed for Scotland are consistent with those already decided by E(EP) for England. The broad thrust is similar: there would be negotiations but with the Government controlling the management side and being able in the last resort to impose a settlement. But there are two significant differences.

6. First, in England, under the Green Paper proposals, the Government will be in a majority on the management side, whereas Mr Rifkind is proposing that they should be in a minority. He also however suggests that they should appoint the Chairman, who could in the last resort determine their policy. The Treasury think this will be sufficient but you may want to check that it will be effective and not create difficulties in England.

7. Secondly, the Green Paper suggested that, in the absence of agreement, the Government needed powers to impose a settlement in circumstances when arbitration was inappropriate, for example because the maximum had been offered which could be afforded. Such a settlement would be submitted to Parliament in an Order subject to

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negative resolution. Mr Rifkind proposes (paragraph 6) to keep the old Burnham-style arbitration and imposition arrangements. If deadlock occurred, both sides would be expected to agree to arbitration. The Government could only impose a settlement by rejecting an arbitration award. You may think that such an arrangement would be too weak, given that it has proved very difficult in practice to use the present legislation. Another weakness of the existing system is that the Government cannot be sure of breaking deadlock; the unions can choose to drag a dispute on by refusing to agree to go to arbitration, since Government can only impose when arbitration has taken place. You may wish to support the Chief Secretary in pressing Mr Rifkind to accept watertight arrangements on imposition similar to the proposals in the Green Paper. Mr Rifkind may resist on the grounds that they would be very controversial and jeopardise the teachers' cooperation on other education reforms.

Opting Out

8. It is disappointing that Mr Rifkind has only included a brief reference to opting out in his paper (paragraph 13), and that he appears to be no nearer to taking a decision than he was in March. You may wish to press him to develop his proposals rapidly: the timetable for drafting the Bill must be getting tight. The main arguments are:

- i. Scottish parents should be given the same opportunity as parents in England and Wales to decide whether they wish their children's schools to remain under local authority control; and
- ii. this Bill provides the obvious legislative vehicle. Introduction of the opting-out provisions could, if need be, be deferred for a period if the new school boards needed time to gain experience before they were ready to participate in opting out.

9. Mr Rifkind's reluctance to proceed may be based on:

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see
Brian's
comments

i. a belief that there is little apparent enthusiasm in Scotland for opting out. The Roman Catholic bishops in Scotland have been lobbying him;

ii. the suggestion that opting-out will attract substantial opposition from the Scottish educational establishment, whose co-operation is desirable for the successful implementation of the Government's other current educational reforms.

Further Education Pay

10. It has already been agreed that powers to abolish the Scottish Joint Negotiating Committee for Further Education should be included in the Bill (paragraph j of the Annex). Mr Rifkind has announced the Government's intentions. A similar decision has been taken for England, but no decision has been taken on replacement machinery. Mr Rifkind and Mr Baker favour replacing these Committees with non-statutory arrangements, which can be controlled through the inclusion of conditions on funding and by the community charge procedure. The Chief Secretary may, however, press for new statutory arrangements for both England and Scotland, which allow the Government to impose a settlement. If there is disagreement on this point, you may wish to ask the Ministers concerned to resolve it, if necessary with a further reference to E(EP).

The legislative programme

11. Both Treasury Ministers and Mr Baker may argue that the Scottish Education Bill should be dropped from next Session's programme, and replaced by a Bill introducing student loans. If this is raised you may wish to consider the following points:

- How important is the Bill for Scotland? Is there a risk that if it is postponed the present machinery on teachers' pay will produce further excessive settlements until the legislation is passed? Or will this be prevented by the direct effect on the community charge?

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- What would be the effect on management of business? You will want to ask the Lord President about this. He may argue that a student loans Bill would be much more controversial than a Scottish Education Bill.
- What would be the Bill's effect on teachers' pay arrangements in England? Whatever is done for Scotland might set the pattern for England. If for example it was agreed that in Scotland there should always be recourse to arbitration in the event of disagreement, would it be necessary to change the Green Paper proposals for England? Is there a case therefore for having the arguments on Scotland and England at the same time, in the 1989-90 Session? Would it even be possible then to have one Bill for Great Britain?

12. On present plans E(EP) will be discussing student loans on 19 July. We do not yet know, however, whether Mr Baker judges that it will be possible to introduce his scheme in Autumn 1990 if he only gets Royal Assent to a Student Support Bill in March of that year.

HANDLING

13. You may wish to ask the Secretary of State for Scotland to introduce his paper. The Chief Secretary, Treasury may wish to respond first, followed by the Secretary of State for Education and Science. The Lord President of the Council will wish to speak about the legislative programme, if this is raised. The Secretary of State for Employment expressed a desire in correspondence earlier in the year that the new negotiating machinery for Scotland should follow the Green Paper proposals, and he may wish to comment on this. Other Ministers may wish to contribute to the discussion.

RJW.

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Cabinet Office
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