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Prime Minister

LOCAL GOVERNMENT (INTERIM PROVISIONS) BILL - ELECTIONS

1. Colleagues will wish to consider options for the future handling of the Local Government (Interim Provisions) Bill following the adoption of the Elwyn Jones amendment in the House of Lords' Committee Stage on 28 June.

2. The Bill, as amended, in effect prevents the order bringing into force those provisions dealing with the cancellation of elections and the appointment of transitional councils from being made until after Royal Assent to the main abolition Bill. The original intention was to make the Commencement Order after the Second Reading of the Main Bill in the Commons. Since the present timetable for the Main Bill envisages Royal Assent in July/August 1985 the amended Bill would in practice mean that the May 1985 elections would be held with the new councillors - probably the present members - having a further short term before being replaced by borough/district appointees.

3. I look to the Business Managers for guidance on the implications of last Thursday's voting pattern on the amendment, especially why such a large number of Conservatives did not vote. It is important to know how far this was because they disliked, for example:-

(i) the cancellation of elections; and/or

(ii) the change in control of the GLC which would result; and/or

(iii) the House of Lords being used merely to rubber stamp Government decisions.

4. Moreover, colleagues will wish to consider very carefully

the crucial question of timing. Whatever course of action we decide to adopt, it is essential that, when seeking to overturn the Elwyn Jones amendment we select the moment which will maximise our chances of success. The basic choices are between Report in the Lords, or on Commons Consideration of Lords' Amendments (CCLA). I shall return to this issue later but colleagues will wish to note that, on the basis of the present timetable, the Bill is not due to have its Third Reading in the Lords until 23 July, which leaves very little time before the date on which Parliament is likely to go into recess.

The Options

5. There are three possible responses to the Elwyn Jones amendment which I identify only to dismiss; I do not believe any of the following are feasible on either political or practical grounds -

Option A: To accept the Bill as amended; ie to take no further steps to compensate for this reverse

This would mean the Government having to accept the nonsense of members of the abolition authorities being elected for approximately a 3 month term only. Moreover the May 1985 elections, amounting to a referendum on the Government's abolition policy, would be held in the sensitive third year of this administration.

Option B: To accept the Elwyn Jones amendment but to seek to avoid the May 1985 elections by accelerating the progress of the main abolition Bill

This would involve applying the guillotine in the Commons to large parts of the main abolition Bill (due to be introduced in November) and taking the risk that the Lords - where no guillotine can be applied - would not succeed in frustrating the timetable. This risk could not be wholly eliminated

by the device of introducing parallel Bills in both Houses simultaneously, even if the commencement date of the next session was advanced.

Option C: Seek to restore the Bill to the version approved by the House of Commons

The Lord President advises that this would not be acceptable to the House of Lords, even if the Government were to make the commencement order for the elections provisions subject to the affirmative resolution procedure. It would in theory be possible for the Government to invoke the Parliament Act; but that Act requires a year to elapse between the Second Reading of a Bill in the Commons in the current session and the passage of that Bill through the Commons in the next session. Since the Commons gave the Paving Bill its Second Reading on 11 April, it cannot come to the Lords again until after 11 April 1985: there would then need to be a very rapid passage through the Lords if Royal Assent were to be secured before 2 May, when the elections were due to be held. Forcing the pace in that way, even if it could be done, would be bound to be politically damaging.

6. We are, therefore, left with only two realistic options; and the choice between them turns critically upon the extent they are judged to be acceptable to the House of Lords.

Option D: To overturn the Elwyn Jones amendment but to provide instead that the May 1985 elections should be postponed until a specified date in the Autumn of 1985

i. This would enable the Paving Bill to be silent on the issue of transitional councils; the provisions dealing with the latter, including the contentious arrangements for securing Party balance, would be brought forward in the main Abolition Bill. Equally there would be no need for a Commencement Order

procedure vis-a-vis elections to the GLC and MCCs because the date of the postponed (not suspended) elections would appear on the face of the Bill. This would have the presentational advantage of retaining the elections which would clearly be able to proceed, with no further action by Government, should the main Abolition Bill fail.

ii. This approach would make it very important for us to introduce, in the Paving Bill, measures whereby the transfer of power could be effected with least disruption. It has been pressed upon me by sympathetic lower tier authorities that they would be better able to prepare themselves systematically for takeover by setting up organising committees, making use of the power to obtain information from the GLC/MCCs that is found in Clause 7 of Paving Bill. In any solution involving transitional councils, therefore, I am persuaded that it would be necessary to introduce in the Paving Bill appropriate means to oblige successor authorities to create such organising committees.

iii. If this Option were to be adopted, the Government would have to announce the proposals it would eventually be bringing forward in the Main Bill. Those proposals would certainly include the cancellation of the Autumn elections, but thereafter there would be a choice of (a) allowing the existing councils to run on until 1 April 1986; or (b) converting the organising committees into Transitional Councils. This conversion could either take effect from the date of Royal Assent of the main Bill; or it could be brought about, under an order-making power, at any time between Royal Assent and 1 April 1986 as a response to irresponsible and obstructive behaviour by the "running on" GLC and MCCs.

iv. The difficulties with this option are -

- that the electoral postponement could be represented as sleight of hand, an meaningless gesture that would be

set aside as soon as the main Abolition Bill was passed;

- that the option had been brought forward too late in the legislative process. It would now be seen as a grudging response to the criticisms voiced in Parliament and would be unlikely to attract the necessary degree of support in the Lords;

- that organising committees, if introduced in the Bill, would have to be set up on the basis of applying the same Party balance criteria that have led to the damaging accusations of political manipulation vis-a-vis transitional councils.

Option E: To overturn the Elwyn Jones amendment, to reinstate the power to make a Commencement Order to cancel the May 1985 elections; to allow the existing GLC/MCC membership to run on sine die; but to take further counter-obstruction powers in the Paving Bill

i. This would have the considerable advantage of being consistent with past practice; in former local government reorganisations, the existing councils have been allowed to run on until their functions were transferred. This option would also remove any taint of gerrymandering if the Government were to make it plain when announcing its proposals that there would be no question of using the main Bill to introduce a power to terminate the existing membership of the GLC and MCCs in advance of 1 April 1986. However as explained in sub paragraph vi. below this could be a very serious hostage to fortune.

ii. The main disadvantage of this option is that it would prolong the present GLC/MCCs in power, giving them much greater scope for obstructive or irresponsible actions.

The Government's keenest supporters would be disenchanted if we were seen to be retreating from our commitment to remove the present leadership of these authorities at the earliest possible date. The Government also would be driven to introduce further counter-measures which would be staff-intensive, controversial and of dubious effectiveness, leading to a very grave risk that the whole abolition timetable would slip, given the extra scope for obstruction that would arise.

iii. The minimum counter-obstruction measures that would be needed (in addition to the control over expenditure under Section 137 of the Local Government Act 1972, a power which we already propose to take in the Paving Bill) would seek to constrain the freedom of the GLC and MCCs -

- to enter into long-term contracts for the supply of goods and services above a defined sum, say £500,000; and

- to dispose of land and property.

iv. In each case, the Bill would provide that the Secretary of State's consent would be required before the transaction could proceed, but would provide for the possibility of general consents being issued. We would thus prevent the abolition authorities from pursuing a deliberate policy of disposing of their assets before transfer in ways which are detrimental to the interests of successor authorities and ratepayer; or entering into long term contractual arrangements which will have similar adverse consequences.

v. The controls will be enforced by provisions making the councillors concerned liable to automatic surcharge to the extent of the "loss" involved and disqualification in the event that consent was not obtained. The transactions themselves would not be vitiated and therefore third party rights would be unaffected. These new controls would have

to operate from the date on which we announce our intention to introduce them.

vi. It should be noted, however, that such counter obstruction measures would only help to prevent the abolition authorities pursuing a "scorched earth" policy; they would not bite on those actions designed to delay or frustrate the process of abolition itself. We must, therefore, consider further measures that would enable council business to proceed with as much normality as possible in the period leading up to abolition. Such measures would include taking a power in the Paving Bill to vary the size of the quorum for the GLC and the MCCs and in the main Bill, a power to set up organising committees which would, by order approved in both Houses, be converted into transitional councils in the event that the GLC or any MCC seriously imperil our timetable for abolition. Our ability to introduce, in the Paving Bill, measures which anticipate possible obstructive actions of a procedural kind is necessarily very limited. However I would welcome the advice of the business managers as to whether the inclusion of a counter-obstruction provision of this nature in the main Bill - which would have to be announced as part of our response to the Elwyn Jones amendment - would cast doubt on our ability to secure the necessary degree of support for the Paving Bill in the House of Lords.

This was originally proposed by Lord Cockfield

7. It has also been suggested, as a possible adjunct to any of the options which retain the concept of a transitional council, that the Government might further reduce the opposition to its proposals by taking steps to ensure that the transitional GLC remained under Labour control.* Annex A to this paper discusses possible ways of achieving that outcome and clearly identifies their severe disadvantages. All would be open to the charge that these were devised to get the Government off a hook upon which it had impaled itself, the obvious course being to remove

* This would only be worthdoing where transitional councils were provided for ab initio. If they were created to because of obstruction there is little point in handing the GLC to a different Labour group which is liable to be equally obstructive.

AT

the hook itself. I do not recommend that we take this device any further.

Conclusions

8. Subject to the views of the Business Managers I believe that Option E is the best way forward. It represents the most promising middle ground that we could find between the various criticisms of the original Bill that we have so far identified, and it is the approach which the Lord President believes most likely to prove acceptable to our supporters and cross-benchers in the House of Lords.

9. There would, of course, be a heavy price to pay by way of extra staff, and inevitably, new demands on Ministerial time, in administering the complex and controversial counter-obstructive measures entailed in Option E. But I believe it would be a price worth paying to secure the Parliamentary acceptance of the Bill.

10. If colleagues agree with this view, the remaining decision is when would be the most effective time to introduce the Government's response to the Elwyn Jones amendment. The Lord President has indicated that it would be possible to have recourse to a Three Line Whip on only one further occasion; it is essential that this be used to maximum effect. My preference would be for Report Stage in the Lords, but I look to the Business Managers for guidance on this critical point.

11. A copy of this minute has gone to Willie Whitelaw, Leon Brittan, Keith Joseph, Peter Rees, John Biffen, John Wakeham, Bertie Denham, Irwin Bellwin and Sir Robert Armstrong.

for P J

3 July 1984

Approved by the Secretary of State & signed in his absence.

ANNEX A

GLC POLITICAL CONTROL

1. The present party balance provisions would mean that all six metropolitan county councils would continue to be Labour controlled in the transitional period. So would ILEA. Only at the GLC would political control change.

2. Among the options put forward, with a view to maintaining Labour control of the GLC in the transitional period are:

(a) to require appointments to reflect the existing political complexion of the GLC; or

(b) to allow transitional councillors to be appointed by the existing GLC, as well as by the boroughs; or

(c) to require additional, non-borough appointments to the transitional council, on the lines of the pre-1974 alderman.

(a) Existing political complexion

4. The choice of basis for borough appointments reflecting the existing political balance of the GLC would be:

(a) either on the basis of Greater London as a whole;

(b) or borough by borough.

5. Option (a) would be impracticable. How would any one borough know what ought to be its own contribution to the overall political equation?

6. In (b), each borough would appoint people of the same political mix as the present GLC councillors representing divisions within the borough. There would be two drawbacks. There is a political objection that some boroughs would be required to appoint a majority of GLC councillors of a different political hue to the boroughs majority party. That is unlikely to disadvantage the Labour party, but it would produce some bizarre results in Conservative boroughs. For example, all of Wandsworth's four appointees would be Labour. In Conservative Ealing and Enfield those boroughs would have to each appoint two Labour members and only one Conservative.

7. Second, there is the practical objection. What happens if a borough finds that it does not have any councillor who is of the same political persuasion as one of the presently serving GLC councillors. For example, Lewisham borough council comprises 41 Labour and 26 Conservative councillors. Yet it would be required to appoint from among its members one SDP transitional GLC councillor - because one of the serving Lewisham GLC members is SDP. It would of course be possible to provide that the requirement was to be exercised so far as practicable - as in the Bill at present. But given the much more precise formula involved, it would be likely to fuel criticisms of gerrymandering.

(b) a mix of GLC/borough appointees

8. The objectives in allowing the present GLC, as well as the boroughs, to appoint to the transitional GLC would be to:

(a) produce an overall Labour majority

(b) give serving GLC councillors an opportunity to combine to serve

(c) through these serving members, to bring experience to the transitional council.

9. Assuming that party balance continues to apply to both sets of appointments, it is bound to be the case that:

(a) the Boroughs appoint a majority of Conservatives

(b) the GLC appoint a majority of Labour members.

10. A simple 50/50 split on approximately the present size of GLC would still produce a Conservative majority. The mathematics dictate that in order to produce an overall Labour majority from these combined services:

(a) the transitional GLC would have to be very large (200+); or

(b) the GLC would have to nominate well over half the transitional councillors; and there would still be a large council (well over 100 members); or

(c) party balance is abandoned - at least from GLC nominees, who would then presumably all be Labour.

11. None of these options seems to have much attraction. (a) would be so large as to be unmanageable. (b) would give the boroughs hardly any say in the running of the transitional council, which would still be large. (c) would be unfair on serving Conservative and Alliance GLC councillors.

(c) the alderman model

12. Whilst retaining borough appointments with party balance, this option envisages additional GLC councillors (with full membership rights) appointed in order to bring political control back to Labour. The question arises, who would make these appointments?

13. If it were truly on the old aldermanic basis, the additional councillors would be elected by the transitional councillors from the boroughs. Given that the majority of these councillors will be Conservatives, it must be open to question whether they would vote in sufficient extras to deny themselves political control. Alternatively, the Labour boroughs might be required to make additional nominations. This could make difficulties for the party balance requirement. But more importantly it risks importing hybridity - because the Conservative boroughs could claim that they were being discriminated against. The other option would be to require present GLC to nominate the additional councillors to serve in the transitional period. But that is little different from above and carries the same disadvantages.

OPPORTUNITIES FOR SERVING COUNCILLORS

14. A further concern - not confined to Greater London - has been that serving upper tier Councillors will have no opportunity to continue in public office, unless they are also borough/district councillors. It has been suggested that the size of the boroughs/districts should be increased by one third; and that the elections for that extra third should be held in May 1985. In addition to providing an opportunity for GLC/MCC councillors to stand for election, it would also help with manning the transitional councils, by providing a larger pool from which boroughs/districts would draw their appointees.

15. The proposition is workable in the metropolitan counties; but there would be considerable practical difficulties in London.

16. Paragraph 3(2) of Schedule 11 to the Local Government Act 1972 provides that the number of local government elections to the number of councillors to be elected shall be "as nearly as maybe, the same in every ward of the district or borough. This means "one man, one vote of equal weight". This principle could be applied relatively easily in the metropolitan districts. There, every ward has three councillors. It would be a simple matter to add one councillor to each ward - and the "equal weight" principle would not be offended.

17. In the London boroughs, some wards have 3 councillors, some 2, and in five councils, some have only 1 councillor. The pattern is random. It would require a long drawn out review of wards by the Local Government Boundary Commission to produce new boundaries giving equality of voting power of electors. Only by adding one councillor to each ward could the present party be maintained - and that would increase the size of all London borough councils by more than one third. In the case of Greenwich, the increase would be by more than half.

18. The one third addition would produce approximately the following results

		now	+⅓
Boroughs	Largest : (Croydon, Ealing)	70	100+
	Smallest: (Barking)	48	70+
Met districts			
	Largest: (Birmingham)	117	156
	Smallest: (Bury)	48	64

19. Other practical objections are;

(a) significant reduction in savings of £3½million (by not holding GLC/MCC elections) because of the need to hold elections in the 4th year when the county elections would normally have been held;

(b) increase in expenditure on allowances paid to councillors

(c) extra resources (buildings, staff) to service extra councillors.

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PRIME MINISTER

LOCAL GOVERNMENT (INTERIM PROVISIONS) BILL: ELECTIONS

At your meeting on 4 July it was agreed that I should report back to colleagues on the amendments needed to give effect to the decision to extend the lives of the present upper-tier councils in time to enable those amendments to be tabled for Report Stage in the Lords on 16 July.

The amendments will be tabled on 11 July as promised by the Lord President. I attach the draft of a press notice which might be made by the Lord President - or if he prefers, by Lord Bellwin - describing the controls we envisage: these are a fleshing out of the proposals in my memorandum of 3 July. The press notice would be issued at the time when the amendments are published.

There are three main issues which arise and which you and colleagues will wish to bear in mind in considering the controls.

Spell out in para 2 of attached

The first is the scope of the controls. The approach we have adopted is to draw the controls broadly, enabling us, through the issue of general consent, to ensure that they bite only on transactions which could seriously prejudice successor authorities. The basis for this is that although our supporters have expressed fears about what the abolition authorities may do, and this is given fresh point as belligerent statements issue almost daily from the GLC, it is difficult to anticipate the forms which obstruction could take.

The second issue concerns penalties. Although the penalty provisions are modelled on the audit/surcharge/disqualification provisions of the Local Government Finance Act 1982, there is necessarily a significant difference. Whether or not there is a loss on the transaction as such, the court may order

the person or persons responsible for the disposal/contract to repay to the council up to the whole of the consideration for the disposal/contract (or a sum equal to the market value of the land). This will be widely seen as a fine, akin to a criminal sanction, on those contravening the Act.

My first reaction was to consider that this provision is draconian. But I have concluded that it is necessary in the context of what is essentially a "deterrent" exercise. If we are to persuade the abolition authorities - and reassure our supporters - that we are serious about obstruction, the penalties need to be of sufficient weight. They need not of course hold any terrors for councils which act responsibly and sensibly. But they will discourage the dissipation of the authorities' resources which might otherwise occur. The courts will have discretion in applying the Act: they may for example order a repayment which is far less than the consideration, or, indeed, impose no penalty at all if there are sufficient mitigating circumstances. But in addition, and particularly to protect the position of officers acting under delegated powers, the Bill will provide that the court shall not make an order if it is satisfied that the person responsible for the disposal or contract neither knew nor could reasonably have known that consent was required. This should ensure that only those who know (or ought to have known) what they are about would, should they fail to obtain consent, fall foul of the legislation.

The Lord President, however, has advised that to follow this course could undermine the House of Lords' support for the Government's balanced response to the Elwyn-Jones amendment (ie the extension of the present GLC/MCC memberships to 1 April 1986 coupled with the two necessary consequential controls outlined above.) He considers that to introduce these controls with their associated penalties as from 12 July would again be seen as anticipating Parliamentary approval of the Bill. he would, therefore prefer the controls to take effect only from Royal Assent.

CMO CONFIDENTIAL

My reason for proposing in my memorandum of 3 July the earliest possible implementation date for the controls was that any delay even for a few days, between the date on which our amendments became public and their taking effect would offer too big a loophole for the GLC and others to embarrassus by rushing through disposals and contracts. We have to bear in mind that since we first considered the need for controls the nature of the game has changed significantly. The whole context is now much more adversarial. Our supporters in the boroughs and districts have been urging us with increasing vigour to take steps to block attempts which they are certain will be made to frustrate the process of abolition. Hitherto we have taken the view that, other than controlling Section

The final issue is the date from which the controls will take effect. In my memorandum I proposed that the controls should bite from the date of announcing them, that is, in practice, the day after that on which they are tabled.

But in view of the Lord President's advice I am prepared to accept the risk of delaying the implementation of the new controls by some three weeks if this is the price which he judges to be necessary to secure Parliamentary approval of the revised provisions. It would also ease Parliamentary consideration of the Bill if we were able to issue as many contents as possible by the time of Royal Assent. Finally, I should say that we retain an open mind for the next twenty four hours on the question of the contract thresholds, on which Irwin Bellwin is taking further soundings.

is £50 000 rather low?

When we discussed this on 4 July, there was a general view that the provisions giving effect to the controls should not be too extensive. I have borne this carefully in mind in considering what is required. I am satisfied that what is envisaged is the minimum necessary if the controls are to

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But in view of the Lord President's advice I am prepared to accept the risk of delaying the implementation of the new controls by some three weeks if this is the price which he judges to be necessary to secure Parliamentary approval of the revised provisions. It would also ease Parliamentary consideration of the Bill if we were able to issue as many contents as possible by the time of Royal Assent. Finally, I should say that we retain an open mind for the next twenty four hours on the question of the contract thresholds, on which Irwin Bellwin is taking further soundings.

is £50 000 rather low?

When we discussed this on 4 July, there was a general view that the provisions giving effect to the controls should not be too extensive. I have borne this carefully in mind in considering what is required. I am satisfied that what is envisaged is the minimum necessary if the controls are to

be a credible counter to any obstructive or irresponsible disposals or contracts which these authorities may be minded to make.

A copy of this minute has gone to Willie Whitelaw, Leon Brittan, Keith Joseph, Peter Rees, John Biffen, John Wakeham, Bertie Denham, Irwin Bellwin and Sir Robert Armstrong.

for P J
9 July 1984

Approved by the Secretary of State and signed on his behalf.

LOCAL GOVERNMENT (INTERIM PROVISIONS) BILL

MEASURES TO PREVENT UNREASONABLE ACTIONS BY THE OUTGOING AUTHORITIES

1. Local Government (Interim Provisions) Bill will require the abolition authorities to obtain the consent of the Secretary of State before disposing of any interest in land. The requirement will have effect notwithstanding Section 123 of the Local Government Act 1972 or any other provision of that or any other Act. It will apply in addition to any consent required for any disposals of land under any other enactment. It will operate in relation to any disposal after Royal Assent to the Bill other than a disposal in pursuance of a contract entered into on or before that date. The Secretary of State will be empowered to give general or specific consents for any disposal. As many consents as possible will be issued on Royal Assent.

2. The Bill will also require the abolition authorities to obtain the consent of the Secretary of State before entering into any contracts which provide for or include:

(a) The carrying out of any building or engineering works where the consideration for the contract exceeds £250,000;

(b) The carrying out of any maintenance works where the consideration for the contract exceeds £250,000;

(c) The supply by the authority to any person, or the purchase by the authority from any person, of any goods or materials, where the consideration for the contract exceeds £50,000;

(d) The provision by the authority for any person, or the provision by any person for the authority, of any administrative, professional or technical services where the consideration for the contract exceeds £50,000; and

(e) The use by any person of any vehicle, plant or apparatus of the authority, or the use by the authority of any vehicle, plant or apparatus where the consideration for the contract exceeds £50,000.

The requirement will operate in relation to any contract entered into after Royal Assent to the Bill.

Anti splitting provision

For the purpose of determining whether the value of any contract exceeds the amounts specified in the provision, a contract and any other contract entered into after Royal Assent will be treated as a single contract if each contract is made within a period of twelve months and relates either to work of a similar description to be performed on the same land or on any adjacent piece or pieces of land or to the supply of goods or services of a similar description. Once again, the Secretary of State will be empowered to give general or specific consents, and as many consents as possible will be issued on Royal Assent.

Penalties

If it appears to any local government elector for the area of the council concerned, or to any successor authority, that consents were required under these provisions and had not been granted at the time of the disposal or the letting of the contract, the elector or authority will be able to apply to the Court.

If the Court is satisfied that a disposal has taken place which required consent, and that consent had not been obtained then it may

(1) order the person or persons responsible to pay the the council which made the disposal or entered into the contract an amount not exceeding the amount or value of the consideration for the disposal or contract. Liability for the payment will be joint and several if more than one person was responsible;

(2) order the person or persons responsible for authorising the disposal or the letting of the contract to be permanently disqualified from being a member of the council concerned and to be disqualified from being a member of any other local authority for a period specified by the Court.

The court will have discretion to not make an order if it is satisfied that the person or persons responsible did not know and could not reasonably have know that consent was required for the disposal or the letting of the contract.

Failure to comply with the requirement for consent will not affect the validity of the purchaser's title to any land disposed of or the validity of any contract entered into. In other words, the rights of third parties will be unaffected by any failure to comply with the consent requirements.

3. The Bill will be amended so as to empower the Secretary of State, if he considers it necessary for the transaction of business, to prescribe, by order, for meetings of any of the abolition authorities a quorum smaller than that specified by the Local Government Act 1972. This is intended to enable council business to be carried on even if substantial numbers of councillors resign or fail to attend.

Prime Minister

It will be helpful if Bernard attends this afternoon's meeting which will need to decide when Government's position is announced and what line is taken with Press in the meantime.

AT
4/7

MR ~~BUTLER~~

LOCAL GOVERNMENT - PRESENTATION

The media have been given the guidance that:

i. the Lords reverse will be discussed by Ministers this afternoon;

ii. the issue is likely to go to Cabinet tomorrow, if only by way of reportage.

I shall face a very insistent Lobby this afternoon and early evening for guidance on Government policy. There is much to be said for giving a clear steer, if possible.

Alternatively, we could simply say the issue will be reported to Cabinet, but that would give the impression that the Government is on the rack. In an ideal world, I would like to avoid any impression that the matter has been referred to Cabinet, as distinct from Government proposals for dealing with the situation being reported to Cabinet.

Could you please arrange for me to have a line on the outcome of the discussion for public use?

BERNARD INGHAM
4 July 1984

SUBJECT cc Master

hle ECh

cc LPO AG
HO CW
LPSO Ld Denham
DES
C.Sec HMT Ld Bellwin
RH(CO)
MB(CO)

10 DOWNING STREET

From the Private Secretary

4 July 1984

LOCAL GOVERNMENT (INTERIM PROVISIONS) BILL - ELECTIONS

The Prime Minister held a meeting today to discuss the options for the future handling of the Local Government (Interim Provisions) Bill following the adoption of Elwyn Jones' amendment in the House of Lords committee stage on 28 June. Present were the Lord President, the Home Secretary, the Lord Privy Seal, the Secretaries of State for the Environment and Education and Science, Chief Secretary, Attorney General, the Chief Whip, Lord Denham, Lord Bellwin. Also present were Mr Heiser, Mr Buckley and Mr Redwood. The meeting had before it your Secretary of State's minute of 3 July. The Lord President said he had taken soundings amongst Government and cross-bench peers on whether the Government would prevail if it introduced an amendment at Report stage in the Lords to cancel elections in 1985 but to allow the present members of the GLC/MCCs to continue in office sine die (which he had interpreted as meaning until April 1986). He now felt that significant support would emerge for this proposal. He had also consulted the leaders of the Opposition in the Lords. Though they were surprised that the Government was prepared to go as far as this they would probably, under pressure from the Opposition in the Commons, press for elections and vote against the Government's proposal.

The Secretary of State for the Environment said it was clear that the Lords would not accept automatic activation of transitional councils. He sought advice on whether the Lords would be prepared to accept a provision for the Government to introduce transitional councils to replace an upper tier authority which was behaving unreasonably. Provisions could be introduced to prevent the most flagrant forms of financial abuse but the timetable for abolition could be put at risk by a policy of non-cooperation. For example, officers could be instructed not to attend meetings or to work with minimum effort.

In discussion it was argued that inclusion of a

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provision of this kind in the Paving Bill would harm the prospects of success in the Lords. Nevertheless it was advisable not to close off entirely the option of taking powers in the Abolition Bill or possibly even in separate legislation. Summing up this part of the discussion, the Prime Minister said no provision for transitional councils to be introduced on a contingency basis should be included in the Paving Bill. The Lord President, in consultation with the Secretary of State for the Environment, should devise a form of words which would indicate that the members of the GLC/MCCs would remain in office until April 1986 but which did not totally close off the Government's freedom to tackle the problem of irresponsible councils.

The Prime Minister said she had been urged in the House to combine extending the mandate of the existing councils with measures to prevent obstruction or irresponsible action by the outgoing councils. The scope for such action was considerable. The Lord President was concerned that if this involved the addition of long and complex clauses it would undermine his efforts to muster support. The Secretary of State for the Environment explained that one important counter obstruction measure had already been entered into the Bill - the provision that expenditure under section 137 of the Local Government Act 1972 should be subject to the consent of the Secretary of State. This would prevent, for example, the GLC paying grants to favoured bodies to enable them to buy assets from the GLC. The two further measures he was proposing, to require the Secretary of State's consent before the GLC/MCCs could enter into long term contracts for the supply of goods and services above a defined sum, say £500,000, and to dispose of land and property, would not require extensive legislation. He proposed to enforce these provisions by making councillors responsible for any infringement liable to surcharge and disqualification. This would safeguard the position of third parties. He asked whether it was acceptable for these sanctions to apply from the date on which the Government announced its intention to introduce them. The Attorney General said there were ample precedents for this in the field of taxation. Summing up this part of the discussion, the Prime Minister said that provided the anti-obstruction provisions were not too extensive they could form part of a balanced package behind which it should be possible to rally support.

The Secretary of State for the Environment said the Bill had originally provided for by-elections to be prohibited from the date of the Commencement order. New arrangements were now needed. The alternatives were to prohibit by-elections from the date of the Paving Bill or from the date of second reading of the main Abolition Bill. He felt that both these were too severe and he recommended

prohibiting by-elections from the date of Royal Assent of the main Bill. This would allow a longer period during which the opposition could stage mass by-elections but it was felt that the position could not extract great advantage from this if the Government refused to contest them.

The Secretary of State for Education and Science said the change in the Bill had impoprtant implications for the proposal to introduce a directly elected ILEA. The original proposal was that the new body would be elected in the autumn of 1985, taking full responsibility from 1 April 1986. This would have allowed it to work in parallel with the transitional body, in particular on the 1986-87 Budget. If the existing GLC/ILEA members were allowed to stay on the new body would operate rather like the shadow joint boards. The Prime Minister was concerned about holding elections in autumn 1985 and suggested they be delayed until the district elections in 1986. This would involve extending the term of the GLC/ILEA members into the 1986-87 financial year, enabling them to set the Budget and precept (though this would of course be subject to rate capping). The Prime Minister invited the Secretary of State for Education and Science, in consultation with the Secretary of State for the Environment, to consider these issues further and to report back to colleagues as soon as possible next week.

The meeting then discussed whether an announcement should be made of the Government's intentions. The Lord President said he wished to avoid a statement in the Commons (which in any case was improper with legislation still being considered by the Lords). His speech on the clause at Report stage should be a comprehensive statement of the Government's position but it would be weakened if it had been preceded by a series of previous announcements. It was agreed that after discussion in Cabinet this week the press should be informed that the Government would be tabling an amendment to the Local Government (Interim Provisions) Bill at Report stage in the House of Lords proposing that the present GLC/MCCs members should continue in office into 1986 but without elections next year. At the same time further provisions would be introduced to prevent unreasonable actions by the outgoing authorities. The Government should resist efforts, including PNQs, to expand upon this.

Summing up the discussion the Prime Minister invited the Secretary of State for the Environment to continue work on the drafting of clauses to be tabled in the Lords and for the Lord President to continue canvassing support for the Government's proposals. They should report back to colleagues early next week so that the clauses could be tabled later that week for Report stage in the Lords on 16 July.

I am copying this letter to Janet Lewis-Jones (Lord President's Office), Hugh Taylor (Home Office), David Morris (Lord Privy Seal's Office), Elizabeth Hodkinson (Department of Education and Science), John Gieve (Chief Secretary's Office, Treasury), Henry Steel (Attorney General's Office), Murdo Maclean (Chief Whip's Office), David Beamish (Lord Denham's Office), Mike Bailey (Lord Bellwin's Office), Richard Hatfield and Michael Buckley (Cabinet Office).

Andrew Turnbull

John Ballard, Esq.,
Department of the Environment.

CMO CONFIDENTIAL

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

3 July 1984

Dear Attorney-General

LOCAL GOVERNMENT (INTERIM PROVISIONS) BILL - ELECTIONS

You will know from my minute to the Prime Minister of today's date that in the light of the adoption of the Elwyn-Jones amendment the extension of the present GLC/MCC memberships for a further eleven months from May 1985 to April 1986 is now a serious possibility. As the minute makes clear, a necessary concomitant, if only to meet the concerns of our supporters, is a strengthening of the counter-obstruction armoury available to the Government. The purpose of this letter is to seek your views on what I propose.

The present draft of the Paving Bill already contains a number of counter-obstruction provisions. Clause 7 places a duty on the abolition authorities to furnish relevant information requested by the Government or boroughs/districts. Clause 9 gives the boroughs/districts the same rights to challenge the authorities' accounts as a local government elector; it also requires the authorities to consult the boroughs/districts about the 1985-86 budget.

These were strengthened by the tabling, on 26 June, of two further provisions. First, an amendment to Clause 9 which will extend the consultation requirement to expenditure commitments beyond 1985-86. Second, a new clause - foreshadowed in Irwin Bellwin's letter of 8 June to MISC 95 colleagues - requiring the abolition authorities to obtain my consent to any expenditure under Section 137 of the Local Government Act 1972 from 1 April 1985, including any resulting from contractual liabilities entered into after 26 June.

In the event that it is decided to extend the abolition authorities' term by 11 months, I would propose to announce at the same time that I will be requiring the abolition authorities to obtain my consent to the following activities:-

i. all disposals of land or buildings

ii. all capital contracts above a threshold of, say, £½ million.

This requirement would apply with effect from the date of the announcement. It would not apply to disposals or contracts which were already entered into on the date of the announcement, though these would have to be notified. We would wish to be

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able to ease the administrative burden by means of general consents.

It will be very difficult to frame the necessary amendments in the limited time available, but I believe we must aim to include the necessary provisions in the Paving Bill rather than leave them to the main abolition Bill. The latter course would entail accepting a lengthy and controversial period during which we would be relying on retroactive validation of our powers.

Whichever course is adopted, three things will be clear. First, the Government's firm determination to prevent obstructive or irresponsible actions from deflecting us from our course, Second, the controls will apply immediately from the date of announcement. Third, they will be enforced by provisions making the councillors concerned liable to automatic surcharge to the extent of the "loss" involved and disqualification in the event that consent was not obtained. The transactions themselves would not be vitiated and therefore third party rights would be unaffected.

I would be grateful for your views on whether you consider there are any objections, as a matter of legal principle, to what is proposed.

Yours sincerely

for PATRICK JENKIN

Approved by Secretary of State and signed by in his absence.

The Rt Hon Sir Michael Havers QC MP

PRIME MINISTER

LOCAL GOVERNMENT - GUIDANCE

I shall need to give guidance after Cabinet tomorrow on the outcome of the discussion of the Paving Bill problem.

Subject to the discussion, I suggest I should say unattributably:

"The Government has decided to table an amendment to the Local Government (Interim Provisions) Bill at Report Stage in the House of Lords proposing that the present members of the GLC/MCCs should continue in office into 1986 but without elections next year.

At the same time further provisions will be introduced to prevent unreasonable actions by the outgoing authorities."

I do not think we should get into detail about precisely when in 1986 the GLC/MCCs will expire or the nature of the further provisions against abuse. We need to leave the Government with maximum room for manoeuvre both for the sake of policy and the position of the Lord President.

BERNARD INGHAM
4 July 1984

cc Lord President
Secretary of State for Environment
Lord Privy Seal
Chief Whip (Commons)
Chief Whip (Lords)

PRIME MINISTER

Local Government (Interim Provisions) Bill - Elections.

Flag A

Flag B

You are holding an informal meeting of Ministers tomorrow, 4 July, to discuss what is to be done after the Government's defeat in the House of Lords on the Abolition Paving Bill. The options and issues are set out in the minute of 3 July from the Secretary of State for the Environment. I understand that you are receiving a brief on the substance from the Policy Unit. This minute suggests how you might structure the discussion.

2. The three main questions seem to be as follows.

(i) What objectives is the Government trying to achieve: which of the various points raised in debate, whether in the Lords or elsewhere, is it trying to meet?

(ii) What is the timetable?

(iii) Where should the Government apply the main leverage: in the Lords or the Commons?

Objectives

3. The Government's objectives so far have been to avoid the elections in May 1985 as wasteful and arguably inappropriate because they would no doubt be used as a referendum on the abolition policy at a time when the main Abolition Bill was before Parliament; and to involve borough nominees as early as possible in the running of services for which they will be responsible when the GLC and metropolitan county councils are replaced on 1 April 1986.

4. The critics have made the following main points.

(i) That it is wrong to suspend elections: either to extend the term of GLC and MCC councillors without a further democratic mandate or to replace them by borough nominees is simply wrong.

(ii) That it is wrong to bring about a change of political control in London (or anywhere else) without an election.

(iii) That it is wrong to anticipate the decision of the sovereignParliament by bringing the provisions of the Paving Bill into effect before the Main Bill receives Royal Assent.

There is no way of meeting (i) without abandoning the Government's objectives as set out in paragraph 3 above. Mr Jenkin's Option D meets objection (iii): his Option E does not. Option E satisfies objection (ii), as does one version of Option D; but both would require complex new provisions.

Timing

5. If new provisions are required for insertion in the Paving Bill they must be got right, and right first time: the GLC and MCCs will be looking for every loophole and opportunity to embarrass the Government. Previous discussions in MISC 95 have suggested that the sort of provisions proposed in connection with Mr Jenkin's Option E to prevent obstructive behaviour by the GLC would be complicated and hard to make effective; it would be dangerous to assume that they could be put into legislative form in a couple of days.

However, there would be very strong objections to allowing the Paving Bill to go into the overspill, because the provisions in the Bill to ensure that information can be collected from the abolition authorities would then not come into effect until October/November.

Forum

6. A related question is in which House the Government should attempt to insert any new provisions. Sentiment in the House of Lords is perhaps unpredictable; and it is possible that Lords Amendments may be rejected by the House of Commons. Ministers may feel that this points to trying to make any changes that are required during consideration of Lords Amendments by the House of Commons: It would then be possible to deploy the argument in subsequent debate in the House of Lords that the Commons had reached their decision after considering what had happened in the Lords, and that the Lords should accept that decision, if only on constitutional grounds. This course would also maximise the time for getting the drafting right. But it almost certainly means that the Lords, and probably the Commons too, would have to sit into August, at any rate unless Third Reading in the Lords (currently due to take place on 23 July) can be brought forward.

HANDLING

7. You will wish to invite the Secretary of State for the Environment to open the discussion. The Lord President of the Council, the Lord Privy Seal, and the Chief Whips in the Commons and the Lords will no doubt have views on the timing, the tactics, and whether the Government should seek to make changes in the Bill in the House of Commons or the House of Lords. Ministers in charge of departments with responsibility for local authority services will wish to comment on the anti-obstruction provisions proposed by the Secretary of State for the Environment in connection with his Option E.

CONCLUSIONS

8. You will wish the meeting to reach conclusions on the following.

(i) What amendments to the Abolition Paving Bill should the Government seek to make?

(ii) When should this be done?

(iii) Should it be in the House of Commons or the House of Lords?

M.S.B.

M S BUCKLEY
Cabinet Office,
3 July 1984.

SB

CONFIDENTIAL

MBPM.
Prime Minister
To note
AT

Prime Minister

LOCAL GOVERNMENT (INTERIM PROVISIONS) BILL

I have been considering with the business managers how best to deal with one of the points which have arisen in relation to the elections provisions of this paving Bill.

Part II of the Bill suspends elections to the GLC and the metropolitan county councils, and provides for the transitional councils between May 1985 and abolition. It will be brought into operation by a commencement order, which I have undertaken not to make until the Commons has given a second reading to the main abolition Bill. Under the paving Bill as drafted, the order would not be subject to any Parliamentary procedure.

This proposal attracted some sharp comment at Lords second reading and it has been strongly represented to me - not least by the Association of Conservative Peers - that the order ought to be subject to affirmative resolution of both Houses. The clear message from the peers is that such a concession would appreciably ease the passage of the Bill through the upper House.

I believe that it would be beneficial. It would be a powerful counter to the criticism that, by relying on Commons second reading to trigger the commencement order, we were taking the House of Lords for granted. A concession on the commencement order is a gesture which our supporters are convinced would be helpful, and which would be well received on the cross-benches.

I have discussed this with the business managers. We are agreed that the Bill should be amended to make the commencement order subject to affirmative resolution of both Houses; and that it is highly desirable that we should signal our intentions quickly,

so that we may derive the maximum advantage for the first day of Committee - this Thursday, 28 June. With Willie Whitelaw's authority, I have therefore asked for the appropriate amendment to be drafted and handed to Lord Halsbury.

I am copying this to Leon Brittan, John Biffen and to John Wakeham.

Andrew Adburn
(Private secretary)

for PJ

(agreed by the Secretary of State, and signed in his absence)

26 JUN 1984