

**CONFIDENTIAL**

9 January 1985

*Jim Pabmets*

I am writing to seek the agreement of colleagues to my announcing, at an early juncture, the introduction of a new clause in the Abolition Bill to supplement the controls over activities of the GLC and Metropolitan County Councils that are obstructive to abolition.

The Local Government Bill as introduced provides for the continuity of activities of the abolition authorities. Except in certain specified areas, no rights or liabilities of the abolished authorities existing at the abolition date will be extinguished. The Bill therefore protects the interests of third parties to whom the GLC or MCC have made a commitment by providing for the continuity of that commitment.

I have however come under pressure from our supporters in the boroughs and districts to restrict the scope for the creation of new commitments which they will inherit. Their concern is twofold: such commitments will reduce the savings which they anticipate from abolition, with the consequence of increased rate poundages for 1986 and beyond; and they are not being consulted by the GLC and MCCs about proposals which involve expenditure after 1 April 1986, despite the consultation requirement in the Paving Act.

There is no doubt that some of the abolition authorities will seek to exploit the continuity provisions in the Bill by creating long term liabilities without consultation with the aim of perpetuating their policies. Such commitments for successor authorities would not necessarily constitute contracts within the scope of the controls in the Paving Act. The most notable example concerns legally enforceable undertakings to make grants, loans or guarantees to a third party. Colleagues will, for example, be aware of recent press reports about the establishment of a 'GLC in Exile' through the financing of a compliant third party.

Now that the Bill has received its second reading in the Commons I consider that we would be justified in taking steps at least to constrain the abolition authorities' ability to secure 'life after death' by the means I have described. I propose that as an immediate and first step this should be achieved by extending the existing controls to provide that consent is required to any enforceable arrangement proposed to be made by the GLC or an MCC under which a liability to make payments to another person or body would pass, on abolition, to successor authorities. This would include commitments to provide loans, grants or financial assistance or undertaking giving rise to contingent liabilities, for example, guarantees.

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During the period immediately preceding Royal Assent on the Paving Bill, certain of the abolition authorities went to great lengths to rush transactions through before the controls took effect. In the light of this damaging experience, I do not think that we can risk the consequences of bringing the arrangements into effect some time after the date of announcement. I therefore propose that they shall have retrospective effect to the date that they are announced and tabled.

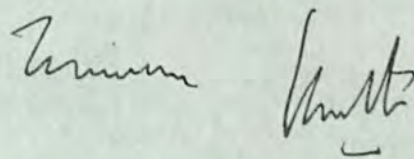
Specific exclusions from the proposed new controls would include payments to staff, where separate provisions apply, and repayments of principle and payments of interest to lenders. I do not consider that the administrative consequences of operating the controls will be burdensome but these can be eased by the issue of general consents for deserving categories of commitment. It would be helpful to have the views of colleagues on possible candidates for such general consents so that some, at least, could be announced at the outset.

As with the Paving Act controls, I propose that the sanction for failure to comply should be a liability to disqualification on application to the High Court by an elector, successor council, or additionally by a person or body to whom liability would be transferred. I also propose that, as before, the third parties involved would not be affected: commitments entered into would not be void simply because consent had not been obtained. I have ruled out for the time being a sanction which hinges on some form of limitation of third party rights. Such an approach would not sit well with the provisions in the Bill that preserve the rights of third parties existing at abolition; it would inevitably lead to an outcry from the voluntary sector; and would create uncertainty which could prejudice the passage of the measure.

Some of our supporters in the Boroughs and Districts have also pressed me to strengthen the sanctions for non-compliance by including either some form of surcharge or a financial penalty, as appropriate. The scope for surcharge as such would be very limited. There will rarely be an obvious and identifiable loss to be recovered and no clear role for the auditor to initiate loss recovery. The only effective deterrent would be to introduce a criminal sanction - that is, a fine rather than a repayment. I would be reluctant to strengthen the sanctions in this way because of the controversy it would trigger, but colleagues may feel that disqualification alone may not be a sufficient deterrent to ensure that irresponsible decisions will be avoided by the more militant abolition authorities, not least the GLC. For the moment, however, I would not propose to include any strengthened sanction in the amendment.

If colleagues agree, I should like to announce the tabling of the necessary amendment to the Bill at an early point in the Committee proceedings. I should therefore be grateful for a reply, if possible by 22 January.

I am copying this to the Lord Chancellor and members of MISC 95, and to Sir Robert Armstrong.



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KENNETH BAKER

The Rt Hon Patrick Jenkin MP

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