

AT
2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434



File →

Why do we have Ministers
need to be
another
advisory
body?
Mr Jenkins proposed
Strategy for the Report and
Third Reading of the Abolition
Bill summarised
at the foot of
page 2

My ref:

Your ref:

28 May 1985

LOCAL GOVERNMENT BILL

I have been considering our response to the reverses that we have suffered in Lords Committee. I accept entirely your view that we should not attempt to overturn any defeats until the Bill returns to the Commons - and that we must look at the overall position after Report before taking final decisions. Nonetheless our handling of the Bill at Report and Third Reading must take account of the action we intend to take.

We were defeated on four issues - countryside matters, highways and traffic management, waste disposal, and the review of ILEA - and reluctantly accepted an amendment on trading standards, subject to necessary tidying up. The attached note by my officials considers these five issues. I agree with the proposals which are summarised in para 10 of the note. There are three points that I would add.

The first concerns ILEA. Clearly the Opposition would like to remove altogether the power to break up ILEA by order - indeed, the logical course for them to take would have been to delete clause 21 altogether. However, I have spoken to the Bishop of London since the debate and I believe that the line suggested in Annex E to the officials' note would satisfy him. (We have, of course, undertaken to let the consequential amendments that were not included in Committee go through on the nod.)

Second, some of the amendments carried against us do not sit well with the remaining provisions of the Bill. In particular, the amended provisions on highways and road traffic are unsatisfactory. I recognise that it is not desirable to send the Bill back to the Commons in this condition. However, the provisions are not completely unworkable; and, since tidying up at Report would be a major task in terms of policy development and drafting (including the replacement of the whole of Schedules 4 and 5) and would be seen as an indication that we were leaning towards acceptance of the principle of retaining strategic highways authorities (which is anathema to our supporters in local government), I think we must leave any consequential tidying up until the Commons.

The third point concerns trading standards. Rodney Elton indicated when he accepted the amendment that some tidying up could be needed at Report. The proposals in Annex F to the note go beyond what is strictly necessary here. But I am sure that we should put limitations on the use of the reserve power and, in particular, give time for the new system to prove itself. We shall, of course, need to clear our lines with Niall Drumalbyn before tabling amendments for Report.

In addition to these issues, we have to consider our line on Planning. Here, the Opposition withdrew their amendments providing for statutory joint planning authorities, partly at least because Rodney Elton indicated a willingness to consider John Sandford's amendment requiring the London boroughs to set up an organisation - not a full-scale Authority - to deal with strategic planning issues. I believe that we must be prepared to amend the Bill on these lines if we are to persuade some of our supporters to oppose further amendments providing for strategic planning authorities..

If we amended the Bill in this sense at Report, there is a clear risk that extra functions would be added to it and that it would develop into a multi-purpose Voice for London. I therefore propose that, at Report, we should give a clear indication of our intention to amend the Bill, but should not bring forward the amendment until Third Reading. This should secure John Sandford's support and enable us either to persuade the Opposition not to press their amendment at Report, or to defeat it if it is moved.

Although John Sandford's amendment related to London, the same general arguments do, of course, run in the Met counties. The case for statutory arrangements is much weaker there, and I would far rather avoid them if at all possible. But it may be necessary to give an undertaking to consider, without commitment, at Report, if the Opposition amendments, which will deal with London and the Mets are to be successfully resisted.

I attach at Annex A a summary of the main points that would need to be recovered if the Bill was to provide for a statutory planning body. The suggested functions are deliberately restricted, so that the body would clearly have a purely consultative and advisory role. If such a body were conceded for London it would replace the proposed Planning Commission.

I am discussing the proposals affecting their functions with Keith Joseph and Norman Tebbit. I am also in touch with Nicholas Ridley both about the defeats and about the Government amendments to Schedule 5 which were not covered following those defeats. I thought however, that I should let you have my views on overall handling as soon as possible. If you agree with the line that I propose, the action needed at Report will be:

a. to accept without further debate the consequential amendments relating to the ILEA review which were not included in Committee.

b. to say nothing about our intentions in relation to the four defeats. If pressed, our line should be that the Government will

consider the overall position when the Bill has completed its Lords stages;

c. to bring forward amendments to the trading standards reserve power; and

d. to indicate our intention to amend the Bill at Third Reading to provide for an advisory/consultative planning body in London; and, if pressed, to consider extending this to the Met counties also.

I shall be glad to know whether you agree with this approach. I should, of course, be happy to discuss my proposals with you if you think that a meeting would be useful.

I am copying this to the Prime Minister, to the Business Managers in both Houses, to Sir Robert Armstrong, and to First Parliamentary Counsel.

Your sincerely

Atkin

for

PATRICK JENKIN

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

CONFIDENTIAL

LONDON BOROUGH'S' JOINT COMMITTEE ON PLANNING

1. The LBC's should be required to establish a joint committee of members.
2. The minimum functions of the committee might be:
 - a. to consider and advise the LBC's on any matters of common interest affecting the planning and development of Greater London;
 - b. to advise the Secretary of State of the views of the LBC's on any matters affecting the planning and development of Greater London on which they are consulted by him.
 - c. to inform the local planning authorities for areas contiguous or adjacent to Greater London, and any body representative of those authorities, of the views of LBC's on any matters of common interest relating to the planning and development of Greater London and those areas.
3. The Committee should not be a corporate body. The Bill should not give it a name.
4. Apportionment of costs among all LBC's would be determined by agreement, or in default by the Secretary of State (cf. cl 93(6)). There could be a limit, adjustable by order, on the total expenditure of the Committee.

CONFIDENTIAL

Local Government Bill

Responses to Changes Forced in Lords Committee

Paper by DOE Officials

Purpose

1. This paper analyses the changes forced upon the Government during Committee stage in the House of Lords and considers the options for responding to them. It does not cover minor changes which were agreed in principle in Committee and on which amendments will be made on Report.

Changes

2. The following changes have been made to the Bill against the Government's wishes:

- a) The Secretary of State is to be required to report to Parliament before abolition day on steps to secure the protection of the countryside.
- b) Highways and traffic management functions to be passed to the Residuary Body in London, and to the PTA joint authorities in the MCs.
- c) Waste regulation and disposal functions to go to joint authorities in London and the MCs.
- d) Removal of duty to review ILEA and to implement review by secondary legislation.

3. In addition, faced with the prospect of defeat, Lord Elton accepted an amendment providing a reserve power to set up statutory joint authorities for trading standards.

CONFIDENTIAL

Assessment

4. The proposed transfer of highways functions to the London Residuary Body is totally unacceptable in abolition policy terms because the residuary bodies are only intended to be temporary bodies with a role limited to sorting out residuary matters after abolition. Even if the Opposition substituted a Joint Authority for the Residuary Body on Report (as they may seek to do) this would be very damaging. Taken together, the changes amount to a substantial and unacceptable shift in the policy away from giving functions to the lower tier and towards statutory joint arrangements.

5. The Lords have not yet voted on planning. An amendment providing for planning to continue on a county-wide basis was withdrawn following a commitment to Lord Sandford to consider his amendment providing for a borough-based body to coordinate planning policies in London. There is, however, a strong possibility that the Opposition will press an amendment on Report providing for statutory joint arrangements for planning in London and the MCs, in effect replicating the present two-tier planning system. This might be done either through freestanding joint planning authorities, or by merging planning, highways and transport into single joint authorities in the MCs and planning and highways in London. Either would be very damaging and totally unacceptable.

Handling

6. It will not be possible for Ministers to take a final view of their reaction to the changes imposed by the Lords until the end of Report stage. But handling at Report and Third Reading must take account of Ministers' intentions even if action has to wait until the Bill returns to the Commons.

CONFIDENTIAL

7. There appear to be three options for handling the changes:

(a) Accept the change now and, if necessary, tidy up on Report. This is only feasible where it is clear that there will be no interaction with decisions taken on Report.

(b) Attempt to change the policy on Report, ie to revert to the original or substitute a fallback. This is probably only feasible for minor changes, or for changes where there is a new fallback to offer.

(c) Leave any changes to the Commons. This would mean accepting that the Bill which goes back to the Commons would be less than satisfactory in terms of drafting. There would then be three options:

(i) overturn the change and revert to the original policy;

(ii) offer an alternative; or

(iii) correct the drafting defects in the Commons.

8. There will also be a limited opportunity to make changes at Third Reading, but these will be confined to fulfilling any undertakings given on Report.

Proposals

9. Annexes A-F attached review each of the changes set out in paragraphs 2-3 and recommend the course of action³ which looks the most feasible at this stage.

CONFIDENTIAL

10. In summary, this is:

Countryside (Annex A) - reconsider in Commons only if other amendments requiring reports are imposed.

Highways in London (Annex B) - reverse in Commons.

Highways in MCs (Annex C) - reverse in Commons.

Waste disposal (Annex D) - reverse in Commons if possible, but be prepared to compromise on temporary statutory joint authorities.

Review of ILEA (Annex E) - reinstate clause 21 in the Commons, but be prepared to compromise by making only the first review subject to implementation by secondary legislation.

Trading standards (Annex F) - tidy up and modify trading standards reserve power at Lords Report.

Conclusion

11. Ministers are invited to endorse the proposals set out in paragraph 10.

LGR Division
DOE
2 Marsham Street
23rd May 1985

COUNTRYSIDE

Policy

1. The GLC and MCC interests will be transferred to the boroughs and districts who already have concurrent powers on most recreation and countryside matters (Clause 6 and Schedule 3 provide for the transfer of the few uniquely upper tier functions). It will be for successor authorities to decide on the level and organisation of the provision of countryside facilities, including arrangements for cross boundary countryside management schemes in country and river valley parks in the metropolitan counties and for specialist terms such as the GLC's Ecology Unit.

Amendment

2. The amendment inserts into Clause 6 a requirement for the Secretary of State to lay a report before Parliament before 1 April 1986 on the steps he will take to ensure the full adoption by boroughs and districts of the facilities, services and responsibilities for the protection and enjoyment of the countryside which serve the continuing needs of the wider country areas and neighbouring populations.

Assessment

3. The amendment is clearly aimed at ensuring that the successor authorities are encouraged to give priority to countryside matters and pick up the GLC and MCCs activities more or less intact. The requirement for a report by the Secretary of State does not, however, in any way affect the transfer of functions under the Bill or place any additional requirements on successor authorities.

Handling

4. The options are:

- a. to accept the amendment and the requirement for a report as it stands - this would entail some

CONFIDENTIAL

additional burden on the Department in preparing the report and the report itself might encourage the Countryside Commission to redouble their efforts for more funds to replace GLC/MCC input. However, provided acceptance did not provoke amendments for reports on other matters, it would not affect abolition strategy.

- b. to attempt to overturn on Report in the Lords - this would probably require firm commitments on both the future of the GLC's Ecology Unit and funding for the Countryside Commission, and possibly the Nature Conservancy Council, to take on the GLC and MCCs' role. The residuary body might provide a temporary home for the GLC and other specialist teams, but the functions must go to the boroughs and districts and any additional pump-priming funding for the relevant quangos would not give the opposition all they want, namely a guarantee that all the GLC/MCCs' activities in this field will be continued in perpetuity.
- c. to attempt to overturn in the Commons - if there was no attempt to overturn on Report in the Lords but further amendments were carried requiring reports on other matters, it might be necessary to consider overturning them all in the Commons. If an attempt to overturn this amendment on Report failed in the Lords it would probably be unnecessarily provocative to attempt to overturn in the Commons.

Recommendation

5. Accept amendment - but be prepared to reconsider in the Commons if other amendments on countryside matters or requiring reports are carried at Lords Report.

LONDON HIGHWAYS AND TRAFFIC

Policy

1. At present there are 3 tiers of highway authority in London; the Secretary of State for trunk roads, the GLC for "metropolitan roads" and the boroughs for local roads. There are, however only 2 tiers for traffic management; the Secretary of State, who is responsible for trunk roads and has reserve powers over all other roads, and the GLC. Clause 7 and Schedules 4 and 5 remove references to the class of metropolitan roads and provide for the boroughs to take over as highway authority for most of the GLC's roads with the remainder to be trunked by order and pass to the Secretary of State. On traffic management the Bill as drafted provides for GLC's responsibilities on all non-trunk roads pass to the boroughs subject to:
 - a. guidance from the Secretary of State backed up by new reserve powers to protect the interests of the wider area;
 - b. the designation of a strategic network of trunk and non-trunk roads with the borough councils being required to seek the consent of the Secretary of State to their traffic management proposals on the latter or otherwise affecting the network;
 - c. a new reserve power for the Secretary of State to take over the management of the computerised Urban Traffic Control System if the boroughs are unable to make satisfactory voluntary joint arrangements for it.
2. On support services it will be for the boroughs themselves to make arrangements for specialist terms (eg. bridge maintenance) and for traffic and travel data - probably by means of Clause 86 arrangements - with some increased input from the Department of Transport.

CONFIDENTIAL

Amendment

3. The amendment inserts a new clause before Clause 7 requiring the Secretary of State to make an order taking effect on 1 April 1986 providing for the London Residuary Body (LRB) to take on nearly all the GLC's highways and traffic functions except for traffic management on local roads over which the LRB is to have reserve powers only. The effect is:

- a. to reinstate the class of metropolitan roads and the present 3 tier system of highway authorities
- b. to devolve traffic management on local roads to the boroughs and subject to guidance from the LRB which will also have reserve powers on proposals affecting its metropolitan roads. This will create 3 tiers where only 2 exist at present;
- c. to provide a strategic highway authority to assemble and disseminate road traffic and transport data and research and to control, manage and maintain the Urban Traffic Control System;
- d. to provide a strategic body with powers to give road safety information and training, to establish concessionary fare schemes and to give grants to voluntary bodies providing transport services.
- e. to give all these strategic and executive functions to a temporary appointed body - which the opposition presumably intend to turn into a joint board at a later date.

Assessment

4. Although after this amendment was carried Clause 7 and Schedules 4 and 5 were moved to stand part of the Bill, the order making power in the new clause is wholly incompatible with the overall policy of transferring functions to the boroughs and districts.

Handling

5. The options are:

- a. to accept the amendment and make consequential

CONFIDENTIAL

changes to the Bill at Report in the Lords - this can be discarded, the reinstatement of 3 tiers of executive highway authorities and the creation of another tier of responsibility for traffic management runs completely counter to the proposals for streamlining and devolving these functions. Similarly the assumption of long term strategic and executive functions by the LRB is wholly outside policy for such bodies.

- b. to attempt to reverse on Report in the Lords - The proposal for residuary bodies to take active steps to offer a temporary home for specialist teams and the revised Clause 86 will meet some of the concerns expressed by supporters of the amendment. There are however no concessions that can be offered on the basic principle of the reestablishment of 3 tiers of highway authorities. The creation of a third tier of traffic management responsibility could probably be more easily overturned on the grounds of unnecessary complexity. However, given the existence of a strategic highway authority, the obvious way round this would be to recombine all local authority traffic responsibilities at LRB rather than borough level which would run counter the policy of devolution of functions and is therefore to be avoided.
- c. to reverse in the Commons.

Recommendation

6. Reverse amendment in Commons.

MCC HIGHWAYS AND TRAFFIC

Policy

1. Unlike in London, at present there are only 2 tiers of highway and traffic management authorities in the metropolitan counties; the Secretary of State, who is responsible for trunk roads, and the MCCs who are responsible for all other roads-subject only to the Secretary of State's existing reserve powers on traffic management. Clause 7 and Schedule 4 and 5 transfer the MCCs' highways and traffic responsibilities to the district councils subject only to;
 - a. guidance from the Secretary of State backed up by reserve powers to protect the interests of the wider area; and
 - b. a new reserve power for the Secretary of State to take over the management of any cross boundary Urban Traffic Control systems if the districts are unable to make satisfactory voluntary joint arrangements for them.
2. On support services it will be for the districts themselves to make arrangements for specialist teams (e.g. bridge/road maintenance) and for traffic and travel data - probably under Clause 86 arrangements - with some increased input from the Department of Transport.

Amendment

3. The amendment inserts a new clause before Clause 7 requiring the Secretary of State to make an order, taking effect in 1 April 1986, providing for the metropolitan county joint passenger transport ^{authorities} to take on the MCC's highway and traffic management responsibilities in relation to principal (ie main) roads only; responsibility for issuing guidance to the districts as to traffic management on other roads; bridge construction and maintenance; road safety and data collection and analysis. The effect is;
 - a. to create 3 tiers of highway and traffic authorities

CONFIDENTIAL

where only two exist at present by devolving some but not all of the MCCs functions;

- b. to create a multifunction joint authority;
- c. to provide a strategic highway and traffic authority to take responsibility for specialist bridge maintenance teams, road safety, data collection. Unlike 58C, the amendment does not specifically refer to Urban Traffic Control systems, however many of the computerised traffic signals will be on principal roads.

Assessment

- 4. As with amendment 58C this amendment is wholly incompatible with the policy of transferring powers to the boroughs and districts set out in Clause 7 and Schedules 4 and 5.

Handling

- 5. The options are;

- a. to accept the amendment and make consequential changes to the Bill at report in the Lords - as with 58C this can be discarded; the creation of a third tier of highway and traffic authority and a multifunction joint authority is wholly outside policy.
- b. to attempt to reverse on Report in the Lords - the arguments against another tier combined with a role for residuary bodies in maintaining bridge maintenance and road safety teams and Clause 86 for data collection, offer better prospects for reversal than exist for 58C. It would, however, be difficult to separate the two.
- c. to reverse in the Commons.

Recommendation

- 6. Reverse amendment in Commons.

Waste Disposal

Policy

1. The Bill as introduced provided for waste regulation and disposal functions to be devolved to the boroughs/districts, with a reserve power for the Secretary of State for the Environment to establish joint authorities for some or all of those functions in all or part of any metropolitan area if he was not satisfied that there was adequate voluntary joint arrangements for the discharge of those functions.

Amendment

2. Lord Cranbrook's amendment (No 73), which was carried, provides for joint authorities in London and each metropolitan county to discharge waste regulation and disposal functions from abolition. The amendment is technically defective.

Assessment

3. There are 4 options:

(a) totally to overturn the defeat and reinstate the provisions as they left the Commons;

(b) to concede joint authorities, although perhaps without precepting powers, for hazardous waste and regulatory functions whilst providing for devolution of other functions to boroughs/districts although with a reserve power;

(c) to concede joint authorities for all waste disposal functions but to require the Joint Authorities, after consulting the boroughs/districts, to submit plans for the winding up of the joint authorities;

(d) to accept the amendment and limit changes to necessary tidying up.

CONFIDENTIAL

4. Ministers will not wish simply to concede (option (d)) on such an important function. Ideally, the amendment should be overturned (option (a)), although Ministers should be aware that they would be open to criticism if, subsequently, they had to make extensive use of the reserve power. If it becomes clear in the Commons that a compromise is going to be necessary, the choice would lie between option (b) and option (c).

5. The minimum functions which could sensibly be transferred to a joint authority for hazardous waste and regulatory functions (option (b)) are:

- site licensing;
- operation of special waste regulations; and
- operation of associated scientific/technical facilities although not a statutory function, the transfer of these facilities to joint authorities would increase their role and size).

These functions taken together amount to some 10% of the total waste regulation and disposal function in expenditure and manpower terms. Option (b) would be a significant concession, and by dealing with hazardous waste it would go to the heart of the principal concern expressed on the Bill. It would, however, probably still be necessary to exercise the reserve power to establish joint authorities for other operational functions at least in some areas, and there would be very little time in which to determine the most appropriate arrangements.

6. Option (c), temporary joint authorities on abolition,

CONFIDENTIAL

may be the most effective form of damage limitation. The Bill would provide for joint authorities for all waste disposal functions from 1 April 1986 but would place a duty on the boroughs/districts by, say, 30 June 1986 to submit detailed proposals for taking over those functions individually or in groups. There would need to be provision for that subsequent transfer by order. This option would allow proper time for sensible planning for the boroughs/districts to assume responsibility on, say, 1 April 1987. It is the arrangement for which many Conservative authorities have been pressing since the White Paper. It could be presented as a response to the failure of Labour-controlled boroughs/districts to plan for takeover of the function and to the further uncertainty introduced by the Lords amendment.

Recommendation

7. Reverse amendment in Commons if possible. If a compromise is needed, amend to provide for temporary joint authorities.

CONFIDENTIALReview of ILEAPolicy

1. The Bill originally provided (clause 21) that the Secretary of State must review the way in which ILEA carried out its functions by end March 1991 and may review it at any time thereafter. The purpose of the review would be to determine whether the functions should be transferred to or divided between all or any of the boroughs. The results of the review could be put into effect by order subject to affirmative resolution procedure. The Secretary of State would therefore have power to break up ILEA without primary legislation.

Amendment

2. The amendment changed the duty to review to a power to review. Because of a misunderstanding the amendments to delete the Secretary of State's power to implement the review by order were not moved, but the Government have given an assurance that if moved they will be accepted on Report as a consequence of the amendment made in Committee.

Assessment

3. The ILEA review power accords with the general abolition policy of giving as many functions to the boroughs as possible. However, education has never been a borough function in inner London and break up of ILEA has never been seen as an essential part of abolition policy.

Handling

4. Although not central to abolition policy, to delete clause 21 would be a major concession. Ministers will wish to reinstate it in its entirety at CCLA. A possible compromise might be:

- to reinstate provision for a mandatory review by 1991 but provide that the power to implement any determination as a result of that review by affirmative order only applies up until 31st March 1991; and

CONFIDENTIAL

- retain discretion for subsequent reviews, but make implementation of any determinations as a result of those reviews subject to primary legislation.

Recommendation

5. On Lords Report accept consequential amendments without commitment. Reinstate original clause 21 in the Commons, but be prepared to compromise by making only first review subject to implementation by secondary legislation.

Trading Standards

Policy

1. The policy is that trading standards should be a district function (it is already a borough function in London) but that the districts in each county should be required to establish a joint committee to seek to coordinate enforcement.

Amendment

2. Ministers accepted amendments requiring the joint committees to be established by 1st September 1985, specifying that their duty should be to coordinate enforcement, rather than "to seek" to coordinate, and placing a duty on the committees to coordinate preparations for taking over trading standards functions. These amendments need some minor drafting changes but are otherwise acceptable.

3. Ministers also accepted, reluctantly and subject to necessary tidying up - an amendment/providing a reserve power for the Secretary of State, if he considers it necessary or expedient, to transfer the trading standards functions to statutory joint authorities.
by Lord Drumalbyn

Assessment

4. Given that the reserve power was conceded, it has to be retained. But it does need substantial amendment to ensure that it serves its intended purpose. Moreover, some policy changes are desirable.

5. As the draft stands the Secretary of State could use his power to set up a joint authority at any time from Royal Assent. However, until the districts (working with the joint committees) have been running the service for a while the Secretary of State will be unable to judge whether the new arrangement is appropriate. There is, therefore, no question of using the power until some time after the abolition date. To prevent lobbying for the instant use of the power it would

be desirable to provide expressly that it would not be used until after the abolition date. In addition, it would be desirable for DTI Ministers to declare their intention not to use the power until the new arrangements have been in operation for a reasonable period of time. It would however be necessary to qualify such a declaration if it were not to be judged to be fettering the Secretary of State's discretion on whether it is "necessary or expedient" to use the power. To overcome these problems it should be provided expressly that the reserve power could not be used until, say, three years after the abolition date.

6. The amendment as drafted provides for the joint authorities to be established using negative resolution procedure. Clause 41, providing for secession from joint authorities, is subject to affirmative procedure. The reserve power (now deleted from the Bill) to establish waste disposal joint authorities was subject to negative procedure. This was chosen rather than affirmative because of the strong possibility that the power would need to be used in some form in the early autumn when Parliament might not be sitting. There is no such constraint on the trading standards power and it seems appropriate to subject its use to affirmative procedure.

Handling

7. There is a commitment to tidy up the reserve power on Report. It would be desirable to make any other changes to the trading standards provisions at the same time.

Recommendation

8. The trading standards reserve power should be tidied up on Lords Report and policy changes on the lines set out in paragraphs 5 and 6 should be incorporated.

29 MAY 1985

11 12 1
10 2
9 3
8 4
7 5
6 6
5 7
4 8
3 9
2 10
1 11
12 12

11 12 1
10 2
9 3
8 4
7 5
6 6
5 7
4 8
3 9
2 10
1 11
12 12