



P.0594

PRIME MINISTERLocal Government Finance Bill

(Secretary of State for the Environment's Minute of 20 November 1981)

BACKGROUND

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The last collective Ministerial discussion of the Local Government Finance Bill was by the Cabinet, under the Parliamentary Affairs Item on 12 November. In addition to deciding that, in the debate that afternoon, the Government would adopt a flexible attitude on possible alternative methods of curtailing Local Authority expenditure, the Cabinet noted that the Secretary of State for the Environment would bring proposals on control of overspending by Order as an alternative to the referendum provisions before the Ministerial Committee on Economic Strategy. In his minute of 20 November, the Secretary of State has argued that the Order option (which he describes as the "centralist" route) is ruled out by advice received from the Attorney General and has listed various alternatives (eg special local elections, and requirements for outside scrutiny by consultants, the District Auditor, a judicial body etc).

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2. You reviewed the options with the Minister for Local Government and the Attorney General on Monday. At this stage we do not know what proposals the Secretary of State for the Environment will make to the Committee since he will wish to take account of the discussions this evening with the backbench Finance and Environment Committees.

MAIN ISSUES

3. In order to assist it in reaching a decision, the Committee will need the most careful and objective analysis of backbench opinion, covering, in particular, the following points:

- a. The Secretary of State asserts that the overwhelming majority of opinion takes the view that the Government cannot abandon the Bill. The Bill goes wider than the clauses concerned with measures to



restrict rates. Does the Secretary of State consider that there is an overwhelming majority of opinion in favour of new measures to restrict rates additional to the existing hold back arrangements? Is it clear that there is sufficient backing for this view among the Government's supporters in the Commons?

b. How far is backbench opposition to the Bill confined to objections of principle to a referendum?

c. How far is there opposition in principle to any curtailment of the rating powers of a duly elected Council by some outside body (eg Central Government, Parliament, the Judicial body, the District Auditor, or some other alternative?)

4. In the light of this assessment the Committee will need to consider the options which are now open, assuming that it is agreed that the proposed referendum provisions must be abandoned. The following possibilities have been identified at various stages in the discussions:

- a. the Order option;
- b. special Elections; " *
- c. review by an outside body;
- d. action confined to Transport Authorities;
- e. reliance on existing hold back arrangements, or reinforcement of them.

Abandon Part I
Ref - not suitable.

Order option

5. Under this option the Local Authority seeking a supplementary rate would be required to make an application to the Secretary of State who would, after considering whether the proposal was justified, put an Order before the House of Commons. When E Committee discussed the Local Government Finance Bill on 5 November (E(81)32nd Meeting) they invited the Secretary of State to arrange for a detailed study of this alternative approach. The Secretary of State did not favour this option because he saw it as representing an increase in Central Government control of Local Government and argued that the large number of Local

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Authorities in England, as compared with Scotland, would make it impracticable for him to exercise the detailed scrutiny of Local Authority expenditure which would be required. The legal advice which he has subsequently received, including advice from the Attorney General, has confirmed his misgivings about this option. The main difficulty is that, in considering the applications from Local Authorities (and it is estimated that there would be 30 or 40 of these) the Secretary of State would be exercising a discretion which would be subject to challenge in the Courts. The Courts might be asked to rule on whether the Secretary of State had taken into account irrelevant considerations or had not taken into account certain proper considerations. Each application would have to be looked at on its merits. Any concession extended to one Local Authority to take account of its individual circumstances would probably have to be extended to any other Local Authority who could make a case on similar grounds. The lawyers have considered the possibility of including a provision in the Bill which would preclude judicial review of the Secretary of State's discretion. The conclusion is however that this would be both highly controversial and ineffective, since the Courts could probably find some basis for reviewing the Secretary of State's exercise of this powers despite this provision. The Order option undoubtedly has some serious disadvantages but the Committee will want a fuller assessment than is contained in the Secretary of State's minute, including views from the Lord Advocate based on experience of the similar provisions in Scotland.

Special elections

6. Throughout the discussions on interim rating measures the Secretary of State for the Environment has favoured making the supplementary rate conditional on a special election, mainly on the grounds that this would lessen the risk of confrontation with a defiant Local Authority. The main arguments against this course, which Ministers have so far felt to be decisive, are that an election could not be confined to the narrow issue of rates, that no action could be taken in respect of non-elected precepting authorities such as the ILEA and that over-spending Local Authorities who win such an election would regard themselves as having a mandate to increase spending even further. The Chief Whip has also taken the view, hitherto, that a requirement for an election rather than a referendum would be unlikely to ease the Bill's passage through Parliament. If the election option is to be pursued further the Committee will need convincing evidence that backbench opinion is likely to view it favourably.



Review by an outside body

7. In his minute of 20 November the Secretary of State lists various options involving review by outside bodies:

"A new statutory duty under which Authorities caught by our proposals would be committed to outside report on how they can make economies and to take this report into account in fixing the level of the supplementary rate; a new judicial body to whom Local Authorities would have to appeal before fixing a supplementary rate to secure its approval; or some recourse to the District Auditor or outside consultant."

8. Before the Committee could lend its support to any of these possible solutions, which have not been previously discussed, they would need to have a fully worked out proposal for consideration. There is however a general point which affects all such options. The outside body would be drawn into political issues which go far beyond the question of whether a Local Authority is acting within the law or in accordance with financial propriety or in an economically sensible and prudent manner. It would seem undesirable for the judiciary to be drawn into making political judgements about Local Authority spending (vide the recent press comment on the London Transport case); it would be equally undesirable to involve an official such as the District Auditor or a firm of consultants in such controversy.

Action confined to Transport Authorities

9. If these options do not find favour, the Secretary of State for Transport may revert to proposals which his predecessor made in July (E(81)82) for applying in effect an EFL to London Transport and the Passenger Transport Executives. Even if the House of Lords confirms the judgement against the GLC in the London Transport case, there may still be a problem over other PTEs which are governed by different legislation. There are however two main difficulties about the transport proposals.

The first is that mere restriction of the availability of finance may not go far enough, and the Government is likely to have to take powers to give directions, and to intervene in detail in the running of the Transport Authorities. Ministers shrank from detailed intervention of this kind when they considered the referendum proposal on 5 November (E(81)32nd Meeting). Secondly there is no guarantee of



relief for the ratepayer. The Local Authority may devote the proceeds of the supplementary rate to some non-transport activity, or may keep the funds in reserve in the hope that, after a General Election, the restriction of external finance for transport authorities would be lifted.

Hold back

10. If none of the new approaches appears sufficiently workable and effective, and likely to prove acceptable in Parliament, the alternative would be to look again at the existing hold back arrangements, to see whether they can be made more effective within existing powers, or with some limited new legislation. In earlier discussions the Secretary of State for Education and Science has suggested that there is scope for action on these lines. The Secretary of State for the Environment is however likely to argue that, for the Government's main targets such as the GLC and certain high spending London Boroughs, the scope for using the hold back weapon has already been fully exhausted.

HANDLING

11. After the Secretary of State for the Environment has opened the discussion, you will wish to call upon the Attorney General and the Lord Advocate to give their advice about the Order option. The Lord President, the Chief Whip, the Chancellor of the Duchy of Lancaster and the Paymaster General may wish to comment on the Parliamentary aspects. The Chief Secretary, Treasury will also wish to speak about the implications of the various courses of action for the control of Local Authority current expenditure.

CONCLUSIONS

12. You will wish to reach conclusions on the following points:

- i. whether the referendum proposal should be finally abandoned;
- ii. whether some alternative new method of restricting rates should be adopted, and if so which one;
- iii. what further work should be put in hand;
- iv. what the timetable should now be.


 P L GREGSON

24 November 1981