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THE CONSTITUTIONAL FRAMEWORK OF THE NEW LEGISLATION

by

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THE CONSTITUTIONAL FRAMEWORK OF THE NEW LEGISLATION

I. INTRODUCTION

1. "The Government are firmly committed to carrying through their manifesto promise to abolish an unnecessary tier of local government and to produce a major transfer of power and responsibility to the London Borough and Metropolitan District Councils. The legislation to effect this will be introduced into Parliament early in the next Session and, subject to the will of Parliament, abolition will take effect on the 1st April 1986... Contrary to the impression given by recent misleading advertising, almost all the functions will devolve, either individually or jointly, onto the local, democratically elected, Councils - in London, the London Borough Councils, and in the Metropolitan County areas, the Metropolitan District Councils. Abolition will therefore mean the decentralisation of powers to the local level and the end to an expensive and unnecessary two-tier system of Local Government in London and the Metropolitan counties. This will bring savings in costs, and consequent benefits to ratepayers. It will bring benefits also to the users of local services because the Councils responsible for those services will be more accessible and more responsive to their needs."

Statement by the Rt. Honourable Patrick Jenkin M.P.,
Secretary of State for the Environment. July 1984

2. This Conference meets to discuss "The Metropolitan Problem" - a title of studious generality. Were you to ask the speakers of this Conference: Is there a Metropolitan Problem and if so what is it? my guess is that you would not get a coherent answer from any one of them and you would certainly not get the same answer from all of them. A number of present problems will no doubt be identified as requiring action. A number of speakers will suggest that the actions proposed by the Government - in so far as we know what these are - themselves will create new problems.

3. My function is no more than to set the scene and, this being a Planning Conference, to concentrate on the Town and Country Planning aspects of the proposed reforms. It was originally envisaged by the Committee that I would outline to you the new legislation. This I can hardly do since the legislation does not exist, not even in Bill form. What I can do is to outline what is known of the Government's present proposals and to set them in context.

II. THE CONSTITUTIONAL BACKGROUND

4. The G.L.C. and the Metropolitan Counties are creatures of statute. The former was created by the London Government Act of 1963 and the latter by the Local Government Act of 1972. In very broad terms the distribution of functions and powers between Metropolitan Boroughs and Metropolitan Counties

established under the latter Act echoes that which had been established between the London Boroughs and the Greater London Council ten years earlier. The main exceptions are education and the fire services with which this Planning Conference is not primarily concerned.

5. In order to find out what functions have been allocated by statute to the counties one needs to search far and wide. A list which may well not be comprehensive is set out in Annexe B of the Government's White Paper "Streamlining the Cities" which Annexe I append to this Paper. For the purpose of this Conference it is perhaps enough to draw attention to the following functions all of which are to be transferred to Borough and District Councils - planning including minerals planning and derelict land reclamation, highways and traffic management, waste regulation and disposal, housing, historic buildings, recreation, parks, and Green Belt land. Before looking at the details however, it may be useful to look at matters rather more broadly.

6. Land use planning has a negative and a positive aspect: it can try and prevent developments which are regarded as undesirable and it can try to stimulate desirable developments. These aspects are inter-related: by preventing a development here you may encourage it to go there; by encouraging it there you may discourage it here. The positive

aspect of planning tends to involve calls on public finance - money for roads and other infrastructure, grants for industries, exemptions from rates, and so on. Most of that money comes, one way or another, from central Government.

7. The tools which Parliament has provided for land use planning are primarily the structure plan and local plan on the one hand, and development control on the other. A point to bear in mind is that at present and in the future under the Government's proposals the ultimate control under both heads is with the Secretary of State. It is he who decides what goes in the structure plan. Where planning permission has been refused he can grant it on appeal; where he doubts the wisdom of granting planning permission he can call in an application for his own decision. Presumably, the reasons why Parliament thought it wise to give the Secretary of State these overriding powers are twofold:

a. because decisions in one planning area can have an effect on other areas or the country at large,

b. because it was thought desirable to give an aggrieved individual a right of appeal.

Although many of us here earns some of our living from advising on and conducting appeals I shall not mention them further in detail in this talk because, in substance, the position will remain unchanged under the Government's proposals.

8. What would change under the proposals is that there would be only one locally elected authority, and that a relatively small one, charged with carrying out the structure plan and development control functions rather than two as at present. The Secretary of State's position as a matter of formality - as the person ultimately responsible for the contents of the structure plan and for decisions on appeals and on call in applications - would not change. As a matter of political reality there will be a substantial change in that, where he wishes to impose his will on a locally elected authority, he will not, as now, have to deal with one carrying the political clout of a huge Metropolitan authority but rather with a relatively small borough.

9. The problem of harmonising the planning decisions of one authority with those of another remains in principle and, because there is no county to act as a primary arbiter, will, I suspect, give rise to more frequent ministerial interventions and thus, in practice, reinforce the tendency of giving more power to central Government at the expense of locally elected bodies. This aspect of the proposed changes - which some would welcome and others would think regrettable - is one which has not been emphasised in the arguments on either side and yet is in my view a very important one in constitutional terms. I do not mean by this to suggest that it is constitutionally improper to concentrate more power in central Government merely that it is constitutionally important.

10. A constitutional storm has been raised on a matter which may well have deserved the raising of the storm but yet which should not now, I suggest, detain this Conference. That was the Government's promotion of legislation which made interim provision for a period prior to abolition of the G.L.C. and the Metropolitan County Councils. Some people did not like the nature of the interim provision but more significantly there was an outcry that interim provision should be made before a decision in principle had been reached by Parliament on whether the abolition of the G.L.C. and the Metropolitan Counties should take place at all. That however is now water under the bridge.

III. THE PROPOSALS

A. Structure Plans

11. The Government propose a new type of unitary development plan tailor-made for the boroughs and Metropolitan District Councils as all-purpose planning authorities. The new type of plan will combine features of both structure and local plans and will be in two parts. Part 1 will be a short policy statement and will include general policies similar to those required for a structure plan, and Part 2 will contain

- a. detailed, site - specific proposals based on on the general policies set out in Part 1;
- b. any explanatory material (such as justification for the proposals) relating to the contents of both parts of the plan; and
- c. a map setting out the proposals in Part 2 on a geographical basis.

12. The Government recognises that Borough and District plans will need to be prepared against the background of a wider view of the planning of each Metropolitan area. To provide such a view and to assist the Borough and District Councils in drawing up their plans the Secretary of State proposes to issue regional strategic guidance .

13. Before issuing his guidance the Secretary of State will convene, as he deems necessary, conferences including representatives of the districts in each Metropolitan County, and of the neighbouring County Councils, together with representatives of Government departments, to advise him on strategic issues which might be the subject of guidance.

14. So far as London is concerned the legislation will provide for a London Planning Commission. This will have no executive role, but will provide a source of continuing advice to the Secretary of State on wider planning issues in London. The London Planning Commission will formulate its advice in the light of the regional context, and after consulting relevant bodies including the London and South East Regional Planning Conference.

15. The Government suggest that the London Borough and Metropolitan District Councils in each area may wish to establish co-operative arrangements for undertaking research and formulating their views on wider regional issues. It is

proposed that the Conferences and the London Planning Commission should take full account of any work or views made available as a result of any voluntary co-operative arrangements established by the Borough District Councils.

16. The advice given by the London Planning Commission and the Planning Conferences will be made public, as will the Secretary of State's draft guidance. There will be an opportunity for public comment before the definitive guidance is finally issued to the Borough and District Councils.

17. Authorities' plans will be required to have regard to national and regional policies, including the strategic guidance given by the Secretary of State. The unitary development plans will be put on deposit, after public participation, in the same way as local plans. There will be a prescribed period for objections to be made to the planning authority. There will also be a selective call-in procedure to ensure, for example, that strategic issues affecting more than one authority can be considered where the Secretary of State deems it appropriate.

18. The duty to prepare a new unitary development plan for particular London Boroughs or Metropolitan Districts will be brought in to force as required by Commencement Orders to be made by the Secretary of State. There will also be

powers of direction to synchronise the preparation of plans in areas where policy issues need to be considered over an area wider than that of one planning authority. Where existing plans are considered by the Secretary of State to be adequate, new plans will not be required immediately. Existing plans will, in any event, continue in force in each London Borough or Metropolitan District until a unitary development plan has been adopted or approved. When a new unitary development plan has been made and brought into force for an area, it will replace the structure plan and any remaining part of the old development plan for the area, but it will incorporate any existing adopted or approved local plans for the area, subject to any proposals in the new unitary development plan for their alteration, repeal or replacement.

19. So far as Green Belts are concerned, the Government proposals provide:

responsibility for Green Belt policy will be consolidated at Borough and District level. This will ensure continuity in planning policies in line with the Government's commitment to a long-term approach to Green Belt issues.

20. As to minerals, the Government proposes that the Borough and District Councils will take over all responsibility for minerals planning which will include making the appropriate provision in the unitary development plan. We are told:

authorities will need to ensure that they are familiar with minerals resources in their area, to make arrangements to consult interested bodies on relevant development proposals, including waste disposal applications, and to ensure adequate access to specialist advice and skills. This may involve joint working arrangements, the establishment of joint units or the use of consultants.

21. As for waste regulation and disposal, the responsibility of the G.L.C. and the Metropolitan County Councils for waste regulation and disposal will be transferred to the Borough and District Councils. The Government consider it essential that in most cases the Borough and District Councils should establish joint arrangements for the co-ordinated discharge of both waste regulation and disposal functions. They will need to demonstrate to the Secretary of State that such arrangements are in firm prospect. The Secretary of State will have a reserve power to establish statutory joint arrangements if he is not satisfied that those made by the authorities voluntarily are adequate.

22. Highways proposals will need to be fed into the unitary development plan process but since the proposals in this field are somewhat more detailed I shall give it a separate heading.

B. Highways

23. Responsibility for highways and traffic management for all existing non-trunk roads in the Metropolitan Counties will be transferred to the District Councils, subject only

to a few particular cases where the roads may be trunked. In London, Borough Councils, which are already the highway authorities for local roads in their areas, will take responsibility for 825 miles of the Metropolitan roads for which the G.L.C. is currently responsible. They will become the traffic management authorities for these and all other non-trunk roads. The Secretary of State for Transport will take direct responsibility for the remaining Metropolitan roads, some 70 miles, which together with the existing 143 miles of trunk roads comprise the key routes within the capital.

24. These key routes form part of a wider strategic London network of some 500 miles, where traffic management policies need, in the view of the Government, to be considered on a comprehensive basis. On the 300 or so miles of the network for which Borough Councils will be responsible, the Councils will have to notify the Secretary of State of proposals that would reduce or alter the capacity of these roads, and obtain his consent.

25. Borough and District Councils will be given a statutory duty to consult other Councils whose areas may be affected by their proposals for traffic management; and, where any disputes cannot be settled by the parties themselves, the Secretary of State's consent will be needed before the proposal can go ahead. In order to provide an overall context

for this consideration, the Secretary of State for Transport will have powers to issue guidelines to the Councils drawn up in consultation with them. The Secretary of State will also have reserve powers to act if the guidelines are disregarded, and if this is likely to have adverse consequences for traffic in the area.

26. Strategic transport and highway issues will be among the matters considered by the Planning Conferences and the London Planning Commission and will also be reflected in the strategic planning guidance to be issued by the Secretary of State for the Environment. The Borough and District Councils will be required to have regard to this strategic guidance in formulating their unitary development plans and to bring forward appropriate proposals.

C. Development Control

27. The Government propose that in future all applications, save those which are called in by the Secretary of State, should be decided by the Boroughs or Districts. The problem of directions and conflicts as between Districts and Counties disappears. They will, I suspect, be replaced by increasing central Government interference.

IV. CONCLUSION

28. I doubt whether it will be profitable for the Conference to discuss whether the decision to abolish the G.L.C. and the Metropolitan County Councils is a desirable one. In practice it seems probable that Parliament will sanction abolition. Abolition will not in law do away with strategic planning: the Secretary of State will still be responsible for that. The interesting issue to which the Department will need to apply its mind - either by policy statement or practice arising on a case by case basis - is the degree and frequency of departmental intervention. The greater the intervention the greater the amount of strategic planning, the less is left to local democracy. It will be interesting to watch the political line-up in the future. The Conservatives traditionally have been de-centralisers and it is to this strand in party thinking that the Secretary of State appealed in his statement part of which I quoted in my opening. Yet I suspect that part of the reason behind this reform may well be a desire to make it more difficult for locally elected bodies to oppose the nationally elected Government. Traditionally the Labour Party has been in the centralist tradition, yet now it opposes what will, I have little doubt, result in a more centralist state. My guess is that the shire counties will be the next to go: they will be seen as an anomaly.

29. May I in conclusion throw out a thought on which some of you may care to reflect as the Conference proceeds. There are at the moment a number of regions in the country - both in and outside the Metropolitan areas. The boundaries of these regions differ from function to function; sometimes they have a statutory basis, sometimes they have not. The department in its internal organisation has divided itself into regional compartments. I wonder whether a Party committed to de-centralisation and yet seeing some virtues in strategic planning will in due course create, say 10, elected regional authorities and will use the experience we have had with the G.L.C. and the Metropolitan County Councils as a guide. Will perhaps the stone which the builders rejected become the corner of a new constitutional settlement?

SUMMARY OF PROPOSALS ON THE REALLOCATION OF FUNCTIONS

FUNCTIONS TO BE TRANSFERRED TO BOROUGH AND DISTRICT COUNCILS

Planning including minerals planning and derelict land reclamation
Highways and traffic management
Waste regulation and disposal
Housing
Trading standards and related functions
Support for the arts
Sport
Historic buildings
Civil defence and emergencies
Support and funding for the magistrates' courts service and the probation service
Coroners
School crossing patrols
Building control
Tourism
Entertainments licensing
Archives and libraries
Recreation, parks, and Green Belt land
Safety of sports grounds
Registration of common land and town or village greens
Maps etc in relation to rights of way
Gypsy sites

In a number of cases the borough and district councils already have statutory powers similar to those of the GLC and MCCs.

FUNCTIONS REQUIRING STATUTORY JOINT ARRANGEMENTS

Police in the Metropolitan Counties
Fire
Education in inner London
Public Transport in the Metropolitan Counties

The MCCs' interests in airports will be transferred to the new public transport joint boards.

FUNCTIONS REQUIRING OTHER ARRANGEMENTS

Land drainage and flood protection in London will become the responsibility of the Thames Water Authority.

Certain arts sponsorship will be taken over by the Trustees of national museums and galleries.

Smallholdings estates will be transferred to appropriate shire county councils. The function will no longer be carried out by authorities in metropolitan areas.