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E(80) 3rd Meeting

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CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

MINUTES of a Meeting held in
the Prime Minister's Room,
House of Commons on WEDNESDAY
6 FEBRUARY 1980 at 4.00 pm

PRESENT

The Rt Hon Margaret Thatcher MP
Prime Minister

The Rt Hon William Whitelaw MP
Secretary of State for the
Home Department

The Rt Hon Lord Carrington
Secretary of State for Foreign
and Commonwealth Affairs

The Rt Hon Sir Geoffrey Howe QC MP
Chancellor of the Exchequer

The Rt Hon Sir Keith Joseph MP
Secretary of State for Industry

The Rt Hon James Prior MP
Secretary of State for Employment

The Rt Hon Peter Walker MP
Minister of Agriculture,
Fisheries and Food

The Rt Hon Michael Heseltine MP
Secretary of State for the
Environment

The Rt Hon John Nott MP
Secretary of State for Trade

The Rt Hon David Howell MP
Secretary of State for Energy

The Rt Hon John Biffen MP
Chief Secretary, Treasury

THE FOLLOWING WERE ALSO PRESENT

The Rt Hon Lord Hailsham
Lord Chancellor

The Rt Hon Norman St John-Stevas MP
Chancellor of the Duchy of Lancaster

The Rt Hon Angus Maude MP
Paymaster General

Sir Ian Percival QC MP
Solicitor General

Sir Kenneth Berrill
Central Policy Review Staff

SECRETARIAT

Sir Robert Armstrong
Mr P Le Cheminant
Mr P Mountfield

SUBJECT

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

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IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

The Committee considered a paper by the Secretary of State for Employment (E(80) 1), and related correspondence. Their discussion and conclusions reached are recorded separately.

LIMITED CIRCULATION AMONG
MEMBERS OF THE CABINET
WEDNESDAY 8 FEBRUARY 1980 AT 4.00 PM

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION
Previous Reference: E(80) 1st Meeting, Minute 2

The Committee has reviewed their minutes dated 1 and 6 February from the Secretary of State for Employment to the Prime Minister covering successive drafts of a working paper, for early publication, about further Government amendments to the Employment Bill. They also had before them a minute dated 1 February from the Chancellor of the Exchequer, and letters dated 21 January and 4 February from the Secretary of State for Trade, considering in these drafts together with E(80) 1 which contained the original proposals on the subject.

THE SECRETARY OF STATE FOR EMPLOYMENT said that the main provisions of the Employment Bill now before the House dealt strictly with picketing, which had earlier been seen as the main problem. The Committee had the previous month approved his proposals for amendments to the Bill, to deal with the new situation on secondary action created by the House of Lords decision in the *British Airways* case. Taken together, these proposals would greatly reduce the immunities of individual workers and restrict the use of picketing. Since then, events in the current round of strikes, including the House of Lords decision in the case of *British Airways* itself, had added to the problems and he had further modified his proposals to take account of these developments. It would, however, be desirable to allow the

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MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

LIMITED CIRCULATION ANNEX

E(80) 3rd MEETING MINUTES

WEDNESDAY 6 FEBRUARY 1980 AT 4.00 PM

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION
Previous Reference: E(80) 1st Meeting, Minute 2

The Committee had before them minutes dated 1 and 6 February from the Secretary of State for Employment to the Prime Minister covering successive drafts of a Working Paper, for early publication, about further Government amendments to the Employment Bill. They also had before them a minute dated 4 February from the Chancellor of the Exchequer, and letters dated 11 January and 4 February from the Secretary of State for Trade, commenting on these drafts; together with E(80) 1 which contained the original proposals on the subject.

THE SECRETARY OF STATE FOR EMPLOYMENT said that the main provisions of the Employment Bill now before the House dealt strictly with picketing, which had earlier been seen as the main problem. The Committee had the previous month approved his proposals for amendments to the Bill, to deal with the new situation on secondary action created by the House of Lords decision in the McShane case. Taken together, these proposals would greatly reduce the immunities of individual strikers and restrict the use of picketing. Since then, events in the current steel strike, including the House of Lords decision in the case of Duport Steel v Sirs, had added to the problems and he had further modified his proposals to take account of these developments. It would, however, be mistaken to allow the experience of one particular dispute, or immediate reactions to the events in a particular dispute, to dominate thinking and decision-making about the changes to be made in industrial relations law. The present climate of public opinion, and of opinion in the trade union movement, would allow the Government to carry

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the changes he had proposed with a reasonable hope that, once they had passed into law, the trade unions would tacitly acquiesce in them and the Opposition would not feel obliged to commit itself to reversing them when it was next in office. If later on these changes were seen not to have gone far enough, it would always be open to the Government to take further measures. If on the other hand the Government now sought to make changes which would provoke intransigent and unified opposition in the trade union movement, the trade unions and the Labour Party would destroy not only those changes but all the changes which moderate members would have been prepared to accept; and with them all prospects of sensible reform in industrial relations law for the foreseeable future. The proposals which the Committee had already approved in principle, as modified in his minute of 6 February, would themselves shift the balance of power significantly in favour of employers. He believed that the trade union movement would be prepared tacitly to acquiesce in them once they were amended. Further measures, especially if these involved changes in the immunities of trade union funds, could provoke bitter, far-reaching and enduring resistance.

THE CHANCELLOR OF THE EXCHEQUER said that he recognised the need to secure the broadest possible acceptance of the Government's measures. But recent events had shown how difficult it was to prevent misuse of the strike weapon. Opinion in the country and the Party now demanded additional limitations on the powers of the unions. It would be a mistake to go forward with limited legislation now, which would itself be controversial, and risk the need to bring forward new and more drastic changes at a later stage in less favourable circumstances. On this basis the Government's posture would not be credible in relation to the Manifesto commitment. The Government should be seeking to legislate now for the period of this Parliament. He would therefore prefer to add to the present Bill amendments on the lines indicated in his letter of 4 February, which would still further restrict the powers of unions to take secondary industrial action against employers not parties to the dispute; and would curtail the present immunity of trades unions against civil action for damages caused by industrial disputes.

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In discussion, the following main points were made -

- a. There were two separate issues: the limitation of secondary action; and the restriction of trade union immunities. Effective steps to deal with the former might well greatly reduce the need for the latter. Consideration of the very difficult question of trade union immunities should be put on one side until the Committee had decided what to do about secondary action.
- b. It might not be possible to eliminate secondary action altogether; but the Government was committed by its Manifesto pledges to ensure that the protection of the law was available to employers who were not engaged in a dispute. The independent steel manufacturers, in a meeting with Ministers the previous day, had called on the Government to honour this pledge. The recent 'Nawala' case also illustrated the need to give employers some additional protection against secondary action.
- c. Two possible methods of restricting secondary action were set out in the papers before the Committee. The first would refine and clarify the definition of 'action in furtherance of a trade dispute', for instance, by writing into statute some of the tests which the Courts had evolved in recent years, until overturned by recent decisions of the House of Lords. This method was consistent with the proposals both of the Chancellor of the Exchequer and of the Secretary of State for Employment; but it would still leave the Courts with wide discretion. There would thus continue to be considerable uncertainty about the state of the law, until judicial decisions had established some case law; and it might be objected that this course left too much responsibility to the judges for meeting the law in this field. The second approach was by way of a clearer statutory definition of the categories of permissible secondary action (the "contract route"). This would impose an objective test, which the Courts would have little difficulty in applying but would inevitably be arbitrary. It would probably turn on a definition of the contractual relation between the injured employer and the original

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party to the dispute. If it was felt necessary to permit secondary action against an employer who was in a regular and substantial contractual relationship with the original employer, the application of such a test in the present steel case would mean that most of the independent producers would have no redress.

d. A variant of the second approach, not set out in the papers before the Committee, would be to allow any party injured by industrial action to pursue his common law remedy provided he was not himself a party to the dispute, and that the injury did not arise from a breach of a contract of employment. This would have the effect of limiting industrial action of any kind to the primary dispute. A further variant of the second approach, on the lines of the Secretary of State for Trade's letter of 11 January, would tighten up the definitions of acceptable secondary action without completely limiting it to the original primary dispute.

e. The timing of publication of the Government's proposals was important. Ministers were under increasing pressure to explain their intentions. But time was needed for proper consideration. It would, in any case, be wrong to publish proposals while the steel strike continued. Once Ministers had agreed their policy, a Working Paper should be published and proper time left for consultation with the various interested parties. This would make it impossible to move Government amendments to the Bill in Standing Committee. But it would be possible to make a statement of the Government's intentions in the light of consultation, introduce new clauses at Report stage, and re-commit the Bill to a Committee of the whole House.

THE PRIME MINISTER, summing up the discussion, said that the Committee would require further time to consider the various options for legislation to deal with secondary action, including those newly deployed at the meeting. A fresh paper should be prepared bringing these out clearly. This paper should deal not only with the options but with the provisions necessary for enforcement and the sanctions available for non-compliance.

The Committee -

1. Invited the Secretary of State for Employment and the Solicitor General to arrange for officials of the Departments concerned to prepare a fact paper setting out the various options for legislation to deal with secondary industrial action and ways of enforcing the law.
2. Agreed to resume their discussion the following week.

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