15 February 1980

PRIME MINISTER

WORKING PAPER ON SECONDARY INDUSTRIAL ACTION

1. I have several comments on the latest draft of the working paper on secondary industrial action circulated by Jim Prior.

2. The introductory paragraphs (1-10) are a clear exposition of the problem and the background. They could include a brief and neutral reference to the general immunity conferred on the trade unions by section 14, in order to avoid misunderstanding, encourage debate, and show the moderation of our present proposals. There is widespread ignorance about section 14 and our proposals. For example, Fred Emery in the Times on 14 February endorsed what he mistakenly thought were Jim's proposals - that an employer who was not a first supplier, first customer, could sue a union if he was affected by secondary action. Emery's job is to "explain" to the Times readers what these issues are all about!

3. The last sentence of paragraph 11 is almost doing the Opposition's job for them:

   (a) We may at some future date want to move towards what were described as options 1, 2 and 4 in the E Committee paper, so it is best to remain neutral about these options for the time being. I don't think the last part of the sentence is neutral. It suggests that the Government believes that it is "fair" that companies which are unfortunate enough to have direct contractual links with a company in dispute is fair game for secondary action.

   (b) The preceding sentence singles out blacking as an example of secondary action. It would in principle be possible to distinguish between blacking (essentially selective action) and sympathetic striking (where wages are forgone) in the future. But the last sentence of paragraph 11 seems to dismiss these distinctions.

   (c) I don't think that removing immunities - which give people a right to seek a civil remedy - should be described as "the proscription of all forms of sympathetic action". The concepts may be interchangeable to lawyers, but to the layman "proscription" suggests something tougher than we have so far contemplated.

4. The second sentence of paragraph 16 describes first customers and suppliers as "commercially concerned in the dispute". This phrase suggests that they are somehow partly responsible for the dispute. I think Jim should be asked to find a phrase which does not suggest that wholly innocent parties are somehow implicated in the dispute. The objection we really have to meet is that we are suggesting that first customers and first suppliers are "contaminated", just through the accident of having contractual relationships.

5. In the last sentence of paragraph 19, there is a reference to a Green Paper on immunities "later this year". My clear recollection is that Jim offered to publish this Green Paper in the summer. The Financial Times report certainly referred to the summer yesterday. I think we should keep up the momentum and hold Jim to his own suggested timing. He said that he had lots of material on the file and, when I questioned Rob Shepherd today, with special reference to section 14, he said that much work had been done. There are also two practical arguments:

(a) Once we get past August we enter the new pay round; October onwards is the season for big strikes. Surely it would be preferable to publish a Green Paper against a less controversial background?

(b) If we publish in the summer, in the light of responses and events (like the armies of pickets we saw yesterday) we may want to introduce another Bill in October/November. Even then, it would not be on the Statute Book in time to affect our second winter in office. But if publication is delayed until towards the end of the year and reasonable time is allowed for consultation, I can see the danger that we could be entering our third winter without the right measures in force.

6. As we have always realised, the first customer, first supplier principle is morally indefensible. It is accepting an arbitrary injustice in order to give the unions at least some of the coercive powers they want. The draft is obviously worded carefully to ensure that this is not picked up and explored in consultation. It may be that we would ourselves prefer to avoid that embarrassment. Alternatively, we can press - as I have suggested here - for less ambiguous wording and if this leads to public questioning of the justice of these proposals, it may well be a good thing. It would certainly help set the stage for a further step forward, in the Green Paper, towards the preferred option of removing individual immunities altogether, except for primary action.

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