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PRIME MINISTER

I thought it would be helpful if, in advance of our meeting on Monday, I circulated a note on an Emergency Powers (Falkland Islands) Bill: first, what it might contain and, second, when it might be introduced.

A second print of the Bill is being circulated today. It has been prepared on a contingent basis without direction from Ministers. It is expressed in terms of the consequences of the unlawful occupation of the Falklands, and enables Defence Regulations to be made in that connection. The draft of any Order in Council making such Regulations is to be subject to affirmative resolution.

The Bill provides (Clause 1(2)) for the expulsion from the United Kingdom of anyone whose expulsion appears to the Secretary of State to be expedient (an earlier draft excluded British Subjects, but this raised questions about E.C. nationals, and it seemed preferable to leave that detail to the Regulations). There is no provision for Regulations about detention (i.e. internment); this is because there are at present no security grounds for interning any Argentinians; because even a provision for internment might provoke retaliation by Argentina against our nationals there; because of the practical problems of locking up Argentinians here; and because the absence of a provision on the analogy of wartime Regulation 18b should make the Bill more acceptable to Parliament. We need to decide whether the omission of any provision for internment in the Bill is acceptable.

Clause 1(2)(d) would allow Regulations to be made suspending the operation of the Trading with the Enemy Act 1939 which otherwise

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CONFIDENTIAL

CONFIDENTIAL

would automatically on the outbreak of war prohibit all transactions with Argentina, instead of most as at present. The Clause would allow suspension to retrospective effect to the outbreak of war. This will increase our room for manoeuvre on the timing of introduction.

As the Explanatory and Financial Memorandum explains, the nub of the Bill would remain in force for three months initially; its financial effects cannot be quantified.

As to when a Bill might be needed, the principal concern must be to avoid upsetting negotiations. Since negotiations are likely to continue until forces are engaged, this seems to rule out introduction before the outbreak of hostilities. The case for early introduction once that stage had been reached will depend on our judgment of what Parliament will expect, as well as what it will accept.

Colleagues may feel that the case for introduction will have to rest on stronger grounds than the need for provisions about the Trading with the Enemy Act. From the Home Office point of view, there are unlikely to be such grounds: there are no Argentinians here whom we particularly want to expel, and such matters as treachery, assisting the enemy and sabotage are not urgent requirements. The case is therefore likely to have to be made on grounds that other powers are urgently required. Requirements identified so far are powers for the Ministry of Defence and the Department of Trade to requisition chattels (including vehicles, ships and aircraft), to take space on United Kingdom ships and aircraft, to take possession of land and to prescribe shipping routes; and perhaps provision for an offence of inducing a breach of discipline, which would go wider than the Incitement to Disaffection Act 1934.

If (as drafted) the Bill is to provide for Defence Regulations to require affirmative resolution, there may be something to be said for having the Bill ready for introduction soon after any

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CONFIDENTIAL

CONFIDENTIAL

hostilities which may break out, making it clear that we shall bring forward Regulations for Parliamentary approval only as and when they may be needed.

I am sending copies of this minute to the Chancellor of the Exchequer, the Secretaries of State for Foreign and Commonwealth Affairs, Defence, Scotland and Transport, the Lord President, the Lord Privy Seal, the Secretary of State for Trade, the Attorney General and the Chief Whip, and to Sir Robert Armstrong.

W.L.

16 April 1982

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