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OD(81)56

COPY NO

8th December 1981

CABINET DEFENCE & OVERSEA POLICY COMMITTEE

POWERS OF DIRECTION OVER PORTS
Memorandum by the Secretary of State for Defence

1. I seek the approval of the Committee for reserve powers of direction "in the interests of national defence" over ports in the United Kingdom. Powers over ports controlled by the British Transport Docks Board and over Sealink facilities owned by British Rail were provided by Section 27(6) of the Transport Act 1962 but were lost by the operation of the Transport Act 1981. The present legal position and the requirement for future legislation is dealt with at the Appendix. It will be noted that adequate powers exist over all forms of transport facilities which might be needed for reinforcement, with the exception of ports and harbours where the absence of powers constitutes a major gop in our defence plans.

2. In my view the absence of these powers could seriously inhibit our deterrent strategy. This depends on the visible and assured capability to move British and American reinforcements to the European theatre of operations in time to contain an attack by Warsaw Pact Forces. Current assessments suggest that, in the worst case, such an attack could be mounted with very little warning. The decision to reinforce may therefore have to be taken at very short notice, in a matter of hours rather than days, and rapidly executed on contingency plans made well in advance. Reinforcements, both of men and munitions, would be mainly shipped from the United Kingdom by sea. There is therefore an operational requirement to ensure that adequate port facilities be made available immediately the decision to reinforce is taken.

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nature and flow of traffic through their ports. Port authorities have co-operated in defence planning and are unlikely (at least for so long as they remain in British hands) to be difficult in times of crisis.

They may, however, be faced with political pressures which, in the absence of Government direction, could prove difficult to resist and beyond their competence to control. Port authorities may also be faced with problems of priorities and conflicting contractual obligations.

Powers of direction would therefore assist them as well as the Government Departments concerned. Such powers would not be inconsistent with commercial freedom in normal times and it is unlikely that they would be regarded in any other light.

however, be gauged in advance and the final choice of ports must be based on a political, civil and military assessment of priorities made at the time of reinforcement. All ports should therefore be covered by the Scotland and elsewhere. A generally applicable provision would also avoid the problem of hybridity. For the reasons explained in para 3 of the Appendix we should not rely on emergency powers legislation. The provision sought is not intended to affect the commercial operation of ports except in circumstances where there is an overriding defence need. No question of compensation arises, therefore.

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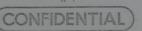
except at times when other preparations for war are likely to be in There are no other manpower or public expenditure implications. All Departments concerned have been consulted. The Home Secretary has expressed his support for my wish to use a legislative opportunity earlier than the Emergency Powers (Defence) Bill to replace powers over ports lost by the Transport Act 1981. The Financial Secretary to the Treasury has said he would be content on the understanding that no public expenditure would be involved unless and until the proposed arguments for emergency powers overwhelming and feels that a general Office, the Welsh Office, the Northern Ireland Office and the Ministry

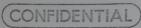


APPENDIX

- 1. Powers to permit the implementation of reinforcement plans exist over Civil Aviation by virtue of Section 11 of the Civil Aviation Act 1980 and over British ships by the use of the Royal prerogative where there is an urgent necessity for taking steps for the protection of the realm. Powers over railways stem from the Transport Act 1962 and over civil airports from Section 9 of the Civil Aviation Act 1949 as well as Section 11 of the Civil Aviation Act 1980. There are also powers to requisition vehicles, aircraft and stores under the Air Force Act 1955 and to requisition vehicles and stores under the Army Act 1955. The field is therefore well covered except in respect of ports and harbour facilities. There has always been a gap in this area but it was much diminished by the powers which existed over the British Transport Docks Board ports and Sealink facilities which have been taken away by the Transport Act 1981. It is essential that the gap
- 2. The Ministry of Defence therefore proposes that an early opportunity be taken to enact suitable legislative provision preferably by means of a Bill dealing with other matters concerning transport.

 The provision should be drafted on the lines of Section 27(6) of the Transport Act 1962, that is to say it should enable the Secretary of State for Transport, or other Secretary of State as appropriate, to give directions in the interests of national defence. Penal provisions should be drafted on the lines of Section 11(4) of the Civil Aviation Act 1980. A ports undertaking should be defined to include the management of a port and the supply of articles, services and facilities required for the operation of a port.
- An alternative but unsatisfactory solution is to rely on the introduction of the Emergency Powers (Defence) Bill. The present draft





- will and regulations are so sweeping that their introduction cannot be anticipated before the commencement of hostilities. Plans for a new to make a place for this legislation in the Parliamentary programme has reaching than may be considered appropriate in the circumstances of
- from the legislation proposed. Directions made to port authorities