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OD(81)56 COPY NO 47

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 gap 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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3. At present port authorities enjoy great discretion to direct the 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.

4. Contingency plans for the movement of British and American reinforcements through British ports are written and reviewed in consultation with all Departments concerned and civil emergency requirements are taken into account. Powers would be invoked in an emergency only for those ports needed to implement particular reinforcement plans and only then if deemed necessary at the time. Neither the availability of shipping nor the operational timescale can, 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 proposed legislation, however unlikely it may be that powers would be required over the large number of fishery and other small ports in 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.

5. 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 train. There are no other manpower or public expenditure implications.

6. 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 powers are invoked. The Transport Secretary does not consider the arguments for emergency powers overwhelming and feels that a general power of direction would cause him some embarrassment. The Scottish Office, the Welsh Office, the Northern Ireland Office and the Ministry of Agriculture, Fisheries and Food have been consulted at official level and have no objection to the proposals.

7. I therefore invite the Committee to agree:

- a. that reserve powers of direction in the interests of national defence are required over all ports in the United Kingdom and should be provided without delay;
- b. that suitable provision be made in an early bill concerning transport.

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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 should now be closed.
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.
3. An alternative but unsatisfactory solution is to rely on the introduction of the Emergency Powers (Defence) Bill. The present draft

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Bill and regulations are so sweeping that their introduction cannot be anticipated before the commencement of hostilities. Plans for a new Bill and regulations are at an early preparatory stage but no decision to make a place for this legislation in the Parliamentary programme has yet been taken. Although more flexible than the present drafts, the powers proposed would be much more comprehensive than is sought here and would call for a political decision more conspicuous and far reaching than may be considered appropriate in the circumstances of the time.

4. Powers to direct labour, in the sense of issuing orders to employees (other than those managing the business) who are bound to comply on pain of criminal sanctions, are not sought and do not arise from the legislation proposed. Directions made to port authorities will, of course, have to be implemented by the giving of directions to their employees but the employees' obligation to obey will arise only from the contract of employment.

5. The proposed legislation should apply to the whole of the United Kingdom including Northern Ireland.

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