

PRIME MINISTEREMPLOYMENT BILL - E

1. Manifesto Commitment: "We shall ensure that the protection of the law is available to those not concerned in the dispute but who at present can suffer severely from secondary action (picketing, blacking and blockading). This means an immediate review of the existing law on immunities . . ."
  
2. Before discussing the options set out in the Secretary of State's paper, you might briefly remind the Committee of our objectives:
  - (a) to fulfil the Manifesto commitment;
  - (b) to provide a new law which clearly defines Parliament's intentions, avoiding excessive judicial discretion or uncertainty;
  - (c) to provide a law which is capable of enforcement with minimum opportunity for martyrdom or ineffectiveness;
  - (d) to lay the basis now for the next moves in trade union reform.
  
3. The Manifesto commitment is capable of more than one interpretation. To us, it plainly states that those not concerned in the dispute should be protected by law. However, others could point out that picketing, blacking and blockading are explicitly mentioned, while secondary or sympathetic strike action is not.
  
4. We think it would be useful for the first part of the discussion to focus on the kinds of practices that must be made unlawful, while identifying others which are either more justifiable or practically impossible to stop. The main types of secondary action are:
  - (a) picketing, on which a clear decision has been taken;
  - (b) sympathetic striking, where those taking strike action are at least depriving themselves of their main source of income;
  - (c) blacking, which is essentially selective action not normally requiring a financial sacrifice by those who perform it;
  - (d) blockading, which amounts to a combination of picketing and blacking, usually intended to heighten the effect of a strike by preventing the movement of goods.

5 We suggest that the objective should be to restrict immunity for blacking and blockading in the same way as we are already doing for picketing. However, sympathetic striking, raises two important issues:

- (a) Do we want to be accused of restricting the right to strike?
- (b) Will restrictions be enforceable?

6. One of the key issues Ministers must decide is whether to attempt restrictions on sympathetic striking. Where a group of workers freely decide to take sympathetic strike action, the only remedy for their employer at present is to dismiss them. If immunity for secondary action is removed, it would become possible for him to seek an injunction restraining a union - or a named unofficial organiser - from calling for sympathetic action. But if the strike has strong support among the work force, the only basis for an effective injunction would be the removal of the section 14 immunity, combined with a declaration that trade unions were responsible for all the actions of their members. This would be more extreme than any of the measures so far proposed. It must therefore be recognised from the outset that "spontaneous" sympathetic striking cannot be prevented. Arguably, this applies to genuinely "spontaneous" secondary picketing or blacking as well.

#### Options

- 7. Accepting these limitations and the objectives above, we think there are two effective choices:
  - (a) remove all immunities for secondary action (option 1, probably best achieved by the Solicitor General's approach described at option 2); or
  - (b) no general immunity for secondary action, with specified exceptions (option 4).
  
- 8. If colleagues are attracted by the Solicitor General's approach, it is important to establish that it would work in practice. The Solicitor General says, at paragraph 11 of the paper, that there would still be wide-ranging immunity where there was no actionable interference with

commercial contracts. No example of this is given. Could the Solicitor General provide one? If a union called a strike at a supplier or competitor, would it be able to argue that it was only seeking to interfere with the contract of employment? Could the employer be sure of a remedy, even though his commercial contracts were only indirectly affected?

9. If colleagues want to make some exceptions to a general withdrawal of immunity, John Nott's approach (option 4) provides the framework. We think the first exception he suggests, 17(i), is a justifiable exception. But the meaning of 17(ii) is less clear and much less justifiable. What would constitute "material support"? Would selling anything to the employer in dispute amount to material support? This would be much too wide an exception. Presumably the exception would also extend to all other companies who were contributors to the CBI's strike fund in cases where this was involved.
10. We see some attraction in the exception suggested at 17(iii), which coincides with the Manifesto commitment to protect those not involved in the dispute.
11. If colleagues do not want to outlaw sympathetic striking in general, we see advantages in 17(iv). We believe a democratic check on secondary strike action would limit it to cases where the work force felt so strongly that it would be impossible to prevent in any event. The principle of balloting members is readily explicable. It would lay the foundation for further reforms - particularly secret ballots for membership elections and for primary strikes, too.
12. Finally, if colleagues want to build on Jim Prior's proposals, the combination of options 3 and 5 - described at paragraph 21 - would be making the best of a bad job. It might even be possible to toughen the Prior approach up still further by adding to the tests described at paragraph 19.

#### Enforcement


13. The official paper discusses the problem of enforcement very superficially. If section 14 were repealed, it would obviously be

necessary to align the immunities for individuals and trade unions in future. This would leave employers with a choice of target according to the circumstances. We suggest you invite the Solicitor General to say more about two aspects of enforcement:

- (a) How confident can we be that - as he suggests at paragraph 15 of his note - courts will consider fines and/or sequestration more effective than imprisonment?
  
- (b) If an injunction is granted against one trade union official, how far is it transferable to others who may take his place? In particular, when an injunction was recently granted against the ISTC, did it also apply to the NUB (who promptly said they would organise the pickets instead)? While the Solicitor General may be able to reassure colleagues about the position when union officials are involved, it must be very difficult to extend an injunction from one group of unofficial individuals to another - especially in circumstances where there are large numbers of people ready to take the place of others.

Consultative Paper: Tactics

14. Whatever colleagues decide tomorrow about the Government's preferred route, a decision is also needed on what options should be displayed in a consultative paper. There is a strong case for including options which go further than the Government intends. In particular, if colleagues decide against amending section 14, this issue could nevertheless be raised on the consultative paper, so that the basis is laid for putting the unions on notice that section 14 may need to be changed at a later date. We also think that if a variant of option 4 is adopted, there is a case for setting out option 2 as an alternative course. Ideally, we should aim to lure some trade unionists into expressing a preference for option 4 - and for naming the categories of exceptions which they would like to see.



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