

PRIME MINISTER

IMMUNITIES FOR SECONDARY ACTION

1. It is extraordinary that Jim Prior's paper should have been written and circulated before the consultation period ended. Cabinet Office seems *at* *first*, to have thought that this period ended last Wednesday, not last Friday. We have this morning been looking at a further 21 documents from external parties, none of which will have been seen by colleagues, or summarised for them by the Department of Employment.
2. Jim Prior's latest memorandum manages to convey a rather misleading impression of the employers' positions: for example, "Employers have expressed conflicting views"; "The range of views shows just how difficult it is to strike a reasonable balance . . .". Our analysis of employers' recommendations does not give this impression*. There is a firm majority in the original papers analysed, and the additional 21 received this morning, for removing immunities for all secondary action. Several mentioned trade union funds - even though the latter was never mentioned in the consultation document. It is quite clear that Jim's latest proposals - though a considerable advance - are not yet right.
3. For today's E, there seem to be two options:
- (i) Accept Jim's latest proposals, while getting agreement, in return, for an extension of the scope of the Green Paper, to cover section 14 and the whole question of ballots; and also other possible changes - in other words, the scope should not be restricted in advance. Or:
 - (ii) Proper consideration must be given to the recommendations from the employers, in which case it is not possible to do justice to them today. The whole exercise would have to be delayed.
4. Our judgment is that, with so much still to do in the area of trade union reform, option (1) would be preferable. It should be agreed by E, preferably today, that the Green Paper review should be carried out inter-departmentally, preferably under Cabinet Office chairmanship, with a wide-ranging remit.



* See Annex.

Immunity should only be provided to participants in a primary dispute

- / Delta Metal
- / GKN
- / BISPA
- CPS
- / Lansing-Bagnall
- / National Association of Steel Stockholders
- / Cement Makers' Association
- Duport Steels Ltd
- / Engineering Employers' Federation (to be debated through Green Paper)
- Freedom Association
- / Cocoa, Chocolate and Confectionery Alliance
- / British Ports Association
- Institute of Directors
- ~ National Federation of Self-Employed and Small Businesses Ltd
- / Ductile Steels Ltd
- / Birmingham Chamber of Industry and Commerce (majority view)
- / Leeds Chamber of Commerce and Industry (through Green Paper)
- ✓ Association of Independent Businesses
- / National Chamber of Trade
- / British Multiple Retailers' Association
- / Confederation of British Industry.

Note 1 This is a total of 21 out of 33 respondents.

Note 2 Although the general immunity of the trade unions themselves was not raised in the Working Paper, 13 out of the 33 comments received thought it should be changed.

Ann Amick

21 March 1980

MR LANKESTER ✓

I also attach Andrew's
used summary of the
representations received. (Mr Prior's cc Mr Wolfson
paper does deal effectively identified Mr Hoskyns
into the weakness identified
in his earlier proposals by
the Service General). 12

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

1. Mr Prior's latest proposals go a very long way to meet the many objections raised to his original proposals. In principle, it would be possible to go still further and remove immunities for all secondary action. The CBI have now proposed this and most of those who have commented on the Working Paper have also argued for it. But this would be going a good deal further than was suggested in the Working Paper. In fact, Mr Prior's proposal will remove immunities from all secondary action in cases where the primary action is fully effective. We think that Mr Prior's latest proposal is a satisfactory step forward if colleagues do not want to go further now. It could be argued that it is better not to go any further now unless a change is also made in the section 14 immunity. Otherwise there is a risk that too many cases of unlawful action might end in martyrdom. 11/1

2. Mr Prior does not mention enforceability and the section 14 immunity for trade unions. This is inevitable, given the decision not to raise this matter in the Working Paper. Despite this, six of those who commented on the Working Paper have urged that trade union funds should be put at risk. This subject will be dealt with in the review which leads to a Green Paper later in the year. As far as we know, the CBI have not commented on it yet.

3. We have not yet seen a record of the CBI's representations made to Mr Prior yesterday morning. From newspaper accounts, it appears that they now favour a legal obligation on employers to help stage trade union ballots. We suggest that Mr Prior should be asked to tell the committee what the CBI have recommended. Sir Leonard Neal has argued (see attached letter) that the present Bill should be used as a vehicle for making ballots compulsory before strike action is taken. At a minimum, he has argued for compulsory ballots when a certain number or proportion of union members petition for one. I believe there is substantial back-bench support for this idea, but it seems to differ from the CBI proposal.

4. We doubt whether there is now time to take effective measures on ballots in the present Employment Bill. On a matter involving the conduct of trade union affairs, it would be necessary to consult first.

Instead, we suggest that the Green Paper Review should be extended in scope to cover the CBI proposal on ballots - and any other matters arising out of the working of the new Employment Act. If the conclusion from the Green Paper exercise is in favour of a further Bill, ballots could provide the most popular part of the package.

5. We hope that E Committee can decide now that the Green Paper Review should be carried out inter-departmentally, preferably under Cabinet Office chairmanship.

6. Finally, there are two less important points made in page 3 of Sir Leonard Neal's letter of 12 March (attached) to which we hope Mr Prior has responded positively. These are:

- (a) Repeal of section 17 of TULRA 1974. This has the effect of making injunctions a little more difficult for employers to obtain. Sir Leonard rightly argues that the Government's whole approach is to rely on employers seeking injunctions. Although section 17 may have had limited relevance in the past, the reduction in immunities we are now proposing makes it important that this obstacle - if it is one - is removed. Mr Prior does not refer to the point in his paper. We understand that his lawyers say it is not an obstacle.
- (b) Sir Leonard argues that lawful picketing should be restricted not only to the place of work, but also to cases where the picket is a party to the trade dispute (or an official of a trade union which is a party). Without this change, circumstances could arise where employees picketed their own place of work in support of a dispute elsewhere. The new proposals diminish this problem, but it is not clear that they eliminate it.


ANDREW DUGUID