

Ind. Pol.

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Ref. A0299

PRIME MINISTER

Trade Union Immunities

~~(E(79) 44)~~

24.9

BACKGROUND

This paper from Mr. Prior was commissioned at E(79) 3rd Meeting on 19th June, and aims to meet the Manifesto commitment which is quoted in paragraph 1 of the Annex.

2. The existing law gives, in defined circumstances, immunity against civil action in tort for those involved in industrial action. The legislation distinguishes between Individuals - (covered by S13), and Trades Unions - (covered by S14).

3. Most of the immunities go back to 1906 but in the case of individuals the 1976 Act also extended immunity to actions which induce or threaten a breach of contract. This prevents firms from taking an injunction in these cases.

4. Mr. Prior recommends only limited action to alter the law on immunities. He proposes no change for the S14 (Trade Unions) or the S17 (which allows a time delay before injunctions are granted). He argues that S17 has not created any problems, and that Trade Union immunity (S14), though wide, cannot be altered without whipping up extreme opposition because the unions would see it as putting their funds, and therefore their existence, at risk. Any change would also, he argues, weaken union discipline and encourage unofficial action.

5. On S13 he points out that recent court decisions have already narrowed the field to "first customer and suppliers". He does not see that legislation would improve on this or make the position clearer. He suggests two options:-

- (a) Leave the law as it has now been interpreted (unless the House of Lords overturns the judgment of the Court of Appeal on Express Newspapers vs. MacShane in which case legislation would be needed) apart from action on picketing (as discussed in paper E(79) 43), and on intimidation and Slade (see below). This option is discussed in paragraphs 5 and 6 of the paper.

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or (b) return the law broadly to the pre-1971 form (which would remove immunity from direct action to breach of contracts other than contracts of employment). This option is discussed in paragraphs 7-9 of the paper.

6. Option (b) would be presentationally attractive and would be consistent with the line the Government took in Opposition. Mr. Prior's judgment however is against going this far at this stage not least because the CBI are strongly urging caution. He therefore favours option (a). The Solicitor General on the other hand believes that a change to exclude direct action could be effective. This is a legal argument on which most past opinion has been against the Solicitor General's view.

7. In addition to this central question Mr. Prior proposes to act on picketing as in paper E(79)43. As for intimidation he is considering the feasibility of adding a provision to stop people who cross a picket line losing their union membership (and therefore their job in many cases). He is also considering a provision - as yet undefined - to deal with the SLADE type action (where the union "blacked" non-unionised firms to force their employers into union membership) though specific proposals must, of necessity, await the report on SLADE by Mr. Andrew Leggatt, QC.

8. If Mr. Prior's proposals are adopted, or if option (b) is chosen, he can include all the legislation in a single Bill to be introduced in November, with Second Reading before Christmas. If more is needed, more extensive consultation would be required, and the timetable would slip.

HANDLING

9. The main question is therefore does Mr. Prior's overall approach, including the actions already discussed on picketing and closed shop, command support as striking the right balance between public expectations and union opposition? Or do colleagues think that a tougher course is to be preferred? (The Chancellor's minute of today is relevant here).

10. You might ask Mr. Prior to introduce his paper, and then ask the Solicitor General to explain his view, before opening the matter up to general discussion.

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CONCLUSIONS

11. If the Committee accepts Mr. Prior's overall thesis the conclusions are as summarised in paragraph 12 of his paper. If on the other hand the Committee favour option (b) - limiting immunity to inducing breaches of contracts of employment - conclusions 12(i), (ii), (iii) and (v) of the paper stand but conclusion 12(iv) would need to be replaced by an invitation to Mr. Prior to enter into the further consultations referred to in paragraph 9 of his paper and to bring the issue back to the Committee for decision when these conclusions have been completed.

*mr.*

(John Hunt)

25th September, 1979