

Prime Minister

Content that Mr. Prior proceed as at X?

(Mr. Prior hasn't give us much time to object) JL

PRIME MINISTER

As a basis for formal consultations I have prepared working papers on three subjects - Schedule 11 of the Employment Protection Act 1975 and the Fair Wages Resolution, Trade Union Recognition and Amendments to the Employment Protection Legislation. Copies of these papers are attached. The first paper follows the discussions of E Committee on 19 June, the second follows correspondence from the Chairman of ACAS and the third follows discussion in E(EA) Committee on 25 July.

21/9

X Now that the TUC Congress is over, I propose to open consultations with the TUC, CBI and other organisations, and am sending them copies of the papers on Monday 24 September. I propose to hold a press conference to discuss the papers the same day, and to give them all due publicity.

I am hoping to conclude consultations in time to allow consideration of detailed proposals for legislation in December, and have made this clear in the letters accompanying the working papers. This will allow 2 months for consultations.

I am sending copies of this minute and its enclosures to other members of E and (E(EA)) Committees, the Lord Chancellor, the Paymaster General, the Solicitor General and Sir John Hunt.

① ~~Have the~~ I like it that this paper has not been kept any internal committee.

To send a paper round on Friday night. For comment of committee on Monday just in time for conference.

J P
21 September 1979

(Approved by the Secretary of State and signed in his absence)

② I have been through these papers - I have several detailed comments but will not pursue them in view of the time factor. However the paper that worries me is the first one which both Mr. Prior and I have discussed in the letter. The Minister's letter are a striking criticism of the decisions of the Courts P.R.D.

in the exercise of their duty of interpreting
Parliamentary legislation.* That criticism
cannot and must not be endorsed
by the Government. The paper
conveys the impression that that letter
is the basis - for referring a charge.

I should like the Lord Chancellor's view & the
S.C.'s view because I am very interested about it.
If they approve - let the paper go. - but not unless.
Further - the way the paper is drafted makes

the obvious reply that the law needs strengthening
in favour of recognition. That is not our view.

M. T.

* Have marked the work samples
as ① ② + ③

WORKING PAPER ON THE TRADE UNION RECOGNITION PROVISIONS OF THE
EMPLOYMENT PROTECTION ACT 1975

1 In the three years they have been in operation, the recognition provisions in Sections 11-16 of the Employment Protection Act 1975 have given rise to numerous problems and difficulties. There appears to be general agreement on the part of employers, trade unions and ACAS alike that the provisions have proved unsatisfactory and that the law needs to be changed. There is however little or no agreement about the nature, or indeed the direction, of the changes required.

2 In addition ACAS is becoming increasingly concerned about the effects of its operation of the statutory provisions on its other, voluntary, role in conciliation and the provision of advice. In its last annual Report the Council stated that the Service's essentially voluntary role in conciliation and the provision of advice did "not sit easily with the statutory duties in Sections 11-16 of the Employment Protection Act".

3 The Chairman of ACAS has since sent the Secretary of State a letter (attached) which sets out the ~~grounds~~^{main} ~~of concern of the ACAS Council.~~
~~making, in particular, the following points:~~

He makes it clear that the Council is not commenting on the substance of the judicial decisions but on their effect on the practical operation of the Council and the Service which it supervises, and he goes on to make in particular the following points:

- a considerably larger number of recognition issues have been settled voluntarily than through the full statutory procedures;

- the discretion which the Council feels it requires in order to function properly is now seen, as a result of judicial decisions, to be much narrower than the Service originally understood was Parliament's intention;

- consequently the Council has become increasingly conscious of the growing incompatibility between some of its statutory duties and the actions it would have preferred to take on grounds of good industrial relations practice;

- some of the duties imposed on the Service by the recognition provisions of the Act are not necessarily compatible with its duty to promote the improvement of industrial relations;

- where an employer or a union refuses to co-operate with ACAS it is left with a duty it cannot perform;

the effect of the finding of the Court of Appeal is said by the Council to be that
- ~~the Court of Appeal has said that~~ the Service is obliged to make findings on a whole series of matters which it may consider irrelevant or unnecessary and in some cases harmful to industrial relations;

- the Act gives ACAS no guidance on the criteria to be adopted in determining what is a bargaining group and it has not been possible for the Council to agree on any criteria which would be generally applicable;

- ~~the~~ the Service has been put in the position where it may be instrumental in undermining existing voluntary procedures;

in the view of the Council
- there are potential difficulties inherent in the confirmation by the Courts that ACAS is to be regarded as a tribunal when considering legal issues.

4 The Chairman concludes his letter in the following terms:

The experience of three years of operation of the statutory procedures have shown the difficulties of operating without criteria and the damaging effect on industrial relations which can result from the Court's interpretation of the statute.
The Service's ability to exercise its own judgement in recognition matters has always been circumscribed by the legislation. The discretion of the Council has been further limited by the decisions of the Courts which have made it progressively more difficult for the Council to exercise its industrial relations judgement in reaching decisions on recognition issues. Even the functioning of the Council is likely to become impracticable as a result of its being deemed to be acting in a judicial capacity. The Council therefore wishes me to advise you that in the light of the increasing difficulties which it is encountering it cannot satisfactorily operate the statutory recognition procedures as they stand.

5 The situation disclosed in this letter is a matter of considerable concern to the Government as is the consideration that the working of the recognition provisions should have caused the impartiality of the Service to be called into question, thereby affecting the valuable work of ACAS generally. This effect has been accentuated when the working of these provisions has been set in the context of the terms of reference of ACAS (Section 1 of the Act), the wording of which has also been called into question.

6 The Government accept that there is now an urgent need for the law to be changed. Indeed, the experience in operation of these statutory procedures on trade union recognition does raise the question whether it is necessary or valuable to have statutory provisions of this kind to deal with these matters or whether it would be better to rely on the ability of ACAS to help settle recognition disputes through the provision of voluntary conciliation and advice, as happens in most cases at present. The Government would welcome views on the issues raised in this paper.