CONFIDENTIAL

cc Mr Whitfield
Mr Hoskyns

Prime Minister
You approved the general lines of this when you met Mr Prior yesterday (record at Flag B).
Agree, subject to colleagues' views?

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PRIME MINISTER

Yes OK.

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACT

TL 7/6

You asked that E(EA) Committee should consider the two changes in employment legislation which I have it in mind to make by Order (Private Secretary letter of 16 May). These are to extend the qualifying period for complaints of unfair dismissal and to reduce from 60 to 30 days the notification and consultation period required on redundancies of less than 100 people.

Flag A

Both these changes would be well received by small employers, and I am anxious to make the Orders as soon as possible, especially as they bear on employment. At the same time, I am concerned not to provoke TUC resentment about what might be regarded as insufficient time for consultation on these the first of our proposed changes in employment and industrial relations legislation. However I had the opportunity yesterday evening to sound out informally Mr Murray and Mr Urwin, the Chairman of the TUC's Employment Policy Committee. I gained a clear impression that on relatively straightforward issues such as these (while the TUC would oppose the changes) they would be unlikely to object forcibly to the time given for consultation provided I could write to them in good time for the June meetings of their Employment Policy Committee and General Council so that they could respond before the end of the month. This would allow us time to take a final decision and make the two Orders before the summer Recess so that they could come into operation shortly thereafter.

Before I write to the TUC, there is the one question of policy to settle, namely, whether to extend the qualifying period to 52 weeks or, as you thought, to 104 weeks. I am convinced that the latter would be going much too far in redressing the balance in favour of the employer: it would deprive 60% of potential applicants of their rights not to be unfairly dismissed and would certainly lead to a

head-on collision with the TUC. Enlightened employer opinion also generally regards a year as sufficient. However I will suggest that we should extend the qualifying period for young people under the age of, say, 18 to 104 weeks in order to give further encouragement to their recruitment, though I would not regrard this as a sticking point if it provokes strong TUC reaction. I have also considered making a similar special extension for those taken on as trainees whatever their age. But such a change would create great problems of definition and operation and would probably force us to delay the introduction of the order, which would be most undesirable. These and other aspects of the two proposals are considered in more detail in the note attached.

Provided you and colleagues agree, I would like to be able to write to the TUC - and of course the CBI - on 11 June in order to keep to the timetable which I propose. I should at the same time inform Parliament of these consultations by answer to a Parliamentary Question.

I am copying this minute to all the members of E(EA) Committee, to the Chief Whip, the Solicitor General and to Sir John Hunt.

JP

7 June 1979

AMENDMENT BY ORDER OF THE EMPLOYMENT PROTECTION ACTS

Note by the Secretary of State for Employment

We have a Manifesto commitment to amend laws such as the Employment Protection Act where they damage smaller businesses - and larger ones too - and actually prevent the creation of jobs. I have set in hand a review of the Employment Protection Act provisions with a view to making any necessary changes, after due consultation, in amending legislation later this session. For these I envisage a second Bill (in addition to that dealing with changes to the law on picketing, the closed shop and union ballots) to be introduced in March-April, which is unlikely to be enacted much before the end of the session.

2. But there are two amendments which would ease the burden on employers, especially in smaller businesses, and which can be made by Order. The first - and more important - change would be to extend the qualifying period of service for complaints of unfair dismissal. The other change would be to reduce the notification and consultation period required on redundancies of less than one hundred people.

EXTENSION OF THE QUALIFYING PERIOD OF SERVICE

3. The unfair dismissal provisions of the Industrial Relations Act 1971 specified a qualifying period of 104 weeks. It was then envisaged that this period would be reduced when industrial tribunals were ready to undertake more cases. In 1974 the Labour Government first reduced the period to 52 weeks and then to the present 26 weeks, on the grounds that this represented a reasonable "settling in" period for employers to assess suitability before the employee enjoyed protection against unfair dismissal. Over the last two years some 25% of unfair dismissal applications were made by employees with between 26 and 52 weeks' service; and some 60% by those with between 26 and 104 weeks' service. The proportions of complaints upheld and dismissed by tribunals do not vary significantly with the length of service nor are young people disproportionately represented (only 7% of applications come from employees aged under 20).

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4. In favour of increasing the qualifying period small employers in particular argue that:

(a) 26 weeks is inadequate for them to assess suitability, particularly when the costs of ensuring compliance with the unfair dismissal provisions and defending complaints are heavy in management time and money. The CBI estimate that the average case which gets to a tribunal costs the employer between £400 and £1,000.

(b) consequently, the provisions inhibit recruitment and a longer qualifying period would enable them to take on more employees, particularly short term. The evidence of surveys on behalf of my Department is inconclusive as to whether these provisions are significant in the recruitment decisions of most employers. Nor has it proved possible to assess the effect on the level of unemployment of past changes in the qualifying period. Surveys by employers organisations do, however, suggest that many employers, particularly small employers, are reluctant to recruit through fear of the legislation.

(c) the Presidents of the Industrial Tribunals advise that a high proportion of the hopeless claims which are at present a source of so much trouble and annoyance to employers are brought by claimants who have been dismissed very shortly after the expiry of the present 26 week limit.

5. To increase the qualifying period would save public expenditure and staff. An increase to 52 weeks is likely to save 140 staff and about £1½m. An increase to 104 weeks would approximately double these figures.

6. The arguments against such action are that:

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6. The arguments against such action are that:

(a) it would significantly diminish one of the most important of the new employee rights and will be strongly opposed by the Opposition and the trade unions;

(b) dismissal on grounds of incompetence, misconduct or redundancy is not "unfair" under present law. So employers with reasons justifying dismissal and who proceed with it reasonably should have nothing to fear and it is desirable that others should amend their practice in the interest of managerial efficiency.

The weakness of these arguments, in my belief, is that many employers, particularly small ones, do not think about the legislation in a rational way at all; and an extension of the period would be likely significantly to affect their morale and give a positive boost to recruitment and hence to economic activity.

7. I therefore favour increasing the period to 52 weeks. To return to the original 104 weeks would deprive 60% of potential applicants of their rights and would lead to a head on collision with the TUC. Nor do I believe that an extension to 104 weeks for a limited class of employees, such as trainees or young people under 18, would be wise. It would not necessarily encourage employers to take on more people, given the proposed extension to 52 weeks, and to create a second-class of employee would be undesirable and I am sure unacceptable to the TUC. The CBI and other employers organisations maintain that a year is long enough for an employer to make up his mind on an employee and that

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period seems to me defensible. The Presidents of the ITs see merit, from their specialised point of view, in increasing the period to 52 weeks but not in going to 104.

PERIOD OF REDUNDANCY NOTICE

8. An employer proposing redundancies is required to consult appropriate recognised trade unions and to notify me within a specified minimum period. Consultation for even a single redundancy must begin at the earliest opportunity and both the consultation and notification must take place at least 60 days in advance of the first dismissal where between 10 and 99 employees are involved. By contrast, the EEC Directive on collective redundancies does not lay down any period for consultation and requires only 30 days advance notice to the competent public authority.

9. The timescale of operations of many smaller firms is short and they may genuinely have no reasons to suppose more than 30 days beforehand that redundancies will be necessary at a particular time. The 60 day notice requirement therefore represents a potential cost of many small firms, since they may either have to delay redundancies beyond the date when they would otherwise be declared or risk a protective award or penalty. A recent survey has shown that in fact nearly 50% of all firms declaring redundancies of less than 100 have failed to give the 60 days notice.

10. I find the case for a reduction in advance notice of redundancies less cogent than that for reducing the period of service for unfair

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dismissals. The trade unions are insistent on adequate notice of redundancies and any reduction in the period of notice will meet with their opposition. On the other hand, to come down to 30 days would still keep us in line with the EEC Directive and would undoubtedly be welcomed as a useful relief by employers; and I am minded to propose it. (Any savings in staff and public expenditure would be negligible).