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# CABINET OFFICE

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D/Employment's note for this evening's meeting.

With the compliments of

PG

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# The civil law and the disputes in coal mining and docks

## The present position

## COAL MINING

### The NUM members

1. The strike of NUM members itself is lawful because it is primary action undertaken in furtherance of a dispute which is 'wholly or mainly' about the 'terms and conditions of employment' - ie jobs and pay - of the strikers themselves (s.29 of the 1974 Act as amended by s.18 of the 1982 Act: definition of 'trade dispute'). No civil proceedings could therefore be taken against the union or its officials by eg NCB customers who cannot obtain coal simply because it is not being mined. The strikers themselves have broken their contracts of employment and as long as all on strike at any one pit are dismissed they are subject to dismissal without any legal redress or compensation because they have forfeited all statutory and contractual rights.

### Secondary action

2. Industrial action by employees outside the mining industry (eg railway workers refusing to move coal) is unlawful secondary action (under s.17 of the 1980 Act) unless the employers of the workers concerned have contracts with the NCB and the action is targetted directly on the performance of those contracts. In fact it is understood that contracts for the carriage of coal are normally between British Rail and the customer (eg CEGB) rather than the supplier (NCB). It seems likely, therefore, that industrial action to prevent the movement of NCB coal is unlawful. Any action to stop imported coal is unlawful. The regional 'days of action' in support of the miners strike are also unlawful secondary action. Given the public expressions of support from the leaders of the unions' concerned for such secondary action as there has been, there is little doubt that the funds of the unions concerned (eg ASLEF) are at risk.

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Picketing

3. The vast majority of picketing by NUM members is and has been unlawful because it has been taking place away from the pickets' own place of work (s.16 of the 1980 Act). On these grounds a number of injunctions have already been granted eg to the NCB against the Yorkshire NUM and to two firms of coal hauliers against the South Wales NUM. The funds of the funds of the NUM Areas concerned in organising the unlawful picketing and probably also the funds of the NUM nationally are at risk (under s.15 of the 1982 Act).

DOCKS

Dockers in Scheme ports

4. The TGWU would seem able to argue that their industrial action is in furtherance of a 'trade dispute' between Scheme port employers and their workers relating to a matter specified in s.29(1) of TULRA 1974 eg terms and conditions of employment of such workers; and that immunity provided by section 13 of that Act for interference with contracts applies. If that is established the action in Scheme ports would be lawful.

5. Registered dock workers are not covered by the employment protection legislation and so if dismissed must look to the civil law remedies deriving from their contracts. Whether the act of striking constitutes a breach of that contract depends upon the circumstances; a short stoppage may not amount to repudiation a prolonged one could be so found and the docker concerned lose civil remedies against dismissal. Under the Dock Labour Scheme dismissal of a registered dock worker by an individual employer does not remove the man from the register and the Dock Labour Board will still have responsibilities to him.

Other TGWU members

6. The original call by the Docks Group of the TGWU repeated by the delegate conference extends to all dockers (and associated workers eg tug and lockgate operators) in all ports. It is quite probable that any strike in a non-Scheme port was unlawful - as in those there is apparently no trade dispute between the workers employed there



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and their own employers about their terms and conditions of employment and the industrial action is most unlikely tob e targetted on commercial contracts between those employers and employers who are parties to a genuine trade dispute (ie unlikely to be lawful secondary action).

Picketing

7. Any picketing of non-Scheme ports by dockers from Scheme ports (aiming to interfere with contracts etc) would certainly be unlawful.

REMEDIES

8. In both disputes the remedies are the same. Any person or firm suffering or threatened with economic loss as a result of unlawful interference (be it striking or picketing) with a commercial contract to which he is a party - eg any customer or supplier of the NCB or anyone whose goods are 'blacked' or whose employees are unlawfully picketed - is likely to have a cause of action. His remedy will be to sue the union or its officials for an injunction and damages.

The position once the Trade Union Bill is in force

9. The commencement date for the Bill's strike ballot provisions should be around 1 October 1984. This is on the assumption that Royal Assent is received before the summer recess, as now seems likely. (The Bill provides for commencement of these provisions two months after Royal Assent: the standard minimum period).

10. The strike ballot provisions will not apply retrospectively to industrial action organised before commencement. New forms of industrial action organised after commencement should however be caught. In technical terms, the union would only be liable (in the absence of a ballot) in respect of new acts of inducing a breach of contract of employment which take place after commencement.

11. As with the earlier 'immunities' legislation, the remedy under the strike ballot provisions will lie with employers rather than with



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trade union members who are called on to strike. In general a trade union member has no right of action against his trade union, either in tort or for the breach of his contract, when he has been called on to act in breach of his contract of employment. Under the operation of the common law, the courts would regard him as free to decide whether or not to succumb to the inducement.

12. This however does not detract from the right of individual trade union members to take action against their union where it has acted in breach of its rules. Moreover, both common law and statutory remedies could be available to any member expelled from their union for refusing to strike. The position of NUM members in these circumstances is discussed at Annex A.



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ANNEX A

POSSIBLE EXPULSIONS FROM THE NUM

1. At common law, the expulsion of a member by a trade union is lawful only if it is carried out in accordance with union rules and with the rules of natural justice. As regards union rules the key question is whether the NUM has the power in its rules to expel members who refuse to strike. This in turn appears to hinge on whether the new rule approved at last week's conference is lawful notwithstanding that it was voted on in defiance of a High Court injunction*. As regards rules of natural justice these usually require a member to be given a full and fair hearing before disiplinary action is taken against him. The remedy for any alleged infringement of a union member's common law rights is by application to the High Court.

2. The most relevant statutory safeguard is s.4 of the 1980 Employment Act which provides union members who work in a closed shop with a right not to be unreasonably expelled from the union to which they are required to belong. The Act does not define 'unreasonably' though it makes clear that an expulsion is not to be held reasonable merely because it has been carried through in accordance with union rules. However, the related Closed Shop Code of Practice effectively defines certain classes of expulsion for refusing to take industrial action as unreasonable. These include expulsions where the industrial action is unlawful or has not been affirmed in a secret ballot.

3. In relation to expulsion from the NUM the key question is whether s.4 applies; ie does the NCB operate a closed shop within the statutory definition (this covers both written agreements and informal arrangements). The better view is that it does though certain NCB spokesmen have cast some doubt on this in recent weeks. Ultimately it woudl be a question of fact to be decided by a tribunal.

4. Assuming s.4 does apply, any expulsions from the NUM would seem

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*Today's Guardian (16.7.84) reports that the group of Notts miners who obtained the injunction are planning to ask the High Court tomorrow to declare the rule change null and void.

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likely to be found unreasonable unless it could be shown that the industrial action had been affirmed in a secret ballot (only one ballot in an NUM area went in favour of strike action). The route of complaint under s.4 is to an industrial tribunal which can award compensation - up to a substantial maximum - if it finds the complaint well-founded.



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This means that there will closures of capacity where the high cost of production means that the collieries concerned have no benefit to the industry in its objective of obtaining low cost production.

With the agreement that such pits should be closed it is anticipated that the change in capacity envisaged in our proposals of 6 March will now not be completed in this financial year but will be achieved over the coming 12 months.

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