

COMMITTEE: TUESDAY 10 NOVEMBER 1981

E(81)112 INDUSTRIAL RELATIONS LEGISLATION - MEMORANDUM BY THE SECRETARY OF STATE FOR EMPLOYMENT

Background

1. E Committee on 29 October endorsed Mr Tebbit's proposals for industrial relations legislation subject to further consideration of the practicability of three particular proposals. Paper E(81)112 reports Mr Tebbit's conclusions on these proposals.

Immunity for Trade Union Funds

2. Mr Tebbit proposes that unions should be held to be liable for the unlawful acts of their officials if a tort is committed by a body or official while acting in an official capacity and a more senior authoritative body or official has not repudiated it. Mr Tebbit admits that further work will need to be done on the details of this proposal but argues that it appears to be the ^{most} promising basis on which to hold consultations. He accepts that his proposals will be vigorously opposed; in the short term it seems likely that the proposals will lead to trade unions challenging the Government and defying the law.

Joinder in Closed Shop Dismissal Cases

3. Mr Tebbit advocates two changes to his earlier proposal that in closed shop dismissal cases the dismissed person himself should be able to "join" the union in unfair dismissal proceedings:-

- (a) an employee who joins the union in proceedings should have to show that the union exercised pressure on the employer to dismiss.
- (b) where a union is found to have contributed to dismissal, its contribution to the compensation should be payable direct to the employee instead of, as now with employer joinder, to the employer.

4. In Mr Tebbit's view the first proposal removes a legal difficulty identified at the E Committee meeting on 29 October, while the second proposal increases the likelihood that some part of the compensation for the dismissed employee will come out of union funds.

Union Labour only Requirements in Contracts

5. Mr Tebbit has reconsidered his proposals for making unlawful union labour only requirements in contracts, viz:-

- (a) provision to declare unlawful any discrimination in seeking tenders or awarding contracts on grounds of union membership or non-membership.
- (b) The removal of immunity for a trade union engaging in industrial action which interferes with the performance of contracts primarily on grounds of union membership or non-membership.

Mr Tebbit is satisfied that these proposals are workable and that no acceptable alternative is available.

Recommendation

6. Ministers have already agreed on 29 October that the overall balance of Mr Tebbit's proposals is about right. The issue for consideration is therefore how the proposals will work in practice and if the proposals offer the best available means of achieving Ministers' agreed aims. The Lord Chancellor and the Law Officers expressed reservations at the earlier E Committee discussions about the likely consequences of pursuing some of Mr Tebbit's proposals. Mr Tebbit himself recognises, particularly in relation to immunity for trade union funds, that there will be "bitter resistance" from the trade union movement and that militant trade unions will probably seek to defy the law and provoke a confrontation with the Government over these issues. However it is Mr Tebbit's view that there is unlikely to be a more favourable time to make this major change which is generally recognised to be right in principle. We see this issue as being essentially a matter for political judgement - ie how far do Ministers wish to go in changing the balance of trade union power and what political risks are they prepared to incur to achieve their desired objectives.

7. Given the established consensus in favour of Mr Tebbit's package we recommend that, subject to the opinions of the Lord Chancellor and the Law Officers, the Secretary of State should raise no objection to Mr Tebbit's revised proposals.