



Ref: B06359

PRIME MINISTER

c Sir Robert Armstrong

Powers of Direction Over Ports
(OD(81) 56)

BACKGROUND

1. The Defence Secretary seeks the Committee's approval to take legislative powers of direction over United Kingdom ports. These would be reserve powers, for use in case of military necessity. Their purpose would be to ensure the effective operation of ports, and priority for British and Allied armed forces, in the event that it was decided to move British and American reinforcements to the Continent of Europe to meet a military threat from the Warsaw Pact. The proposal has nothing to do with civil emergencies, such as a strike occurring in peacetime. Similar powers of direction already exist over civil aviation, British registered ships, railways and civil airports; and there are powers to requisition vehicles, aircraft and stores.
2. Powers of direction over ports have not previously extended to all United Kingdom ports. Under the Transport Act 1962 they did extend to those controlled by the British Transport Docks Board (BTDB) and to Sealink facilities owned by British Rail. But these powers were lost when the Transport Act 1981 came into force. The Ministry of Defence would have preferred that provision to retain these powers should have been included in the Transport Act 1981; but they were not consulted by Department of Transport officials until the Bill was already before the House, and it was not found possible to include a suitable amendment before the Bill finished its passage through both Houses.
3. Even the 1962 Act, when it existed, was unsatisfactory to the Ministry of Defence, since it only covered about a third of our major ports. It excluded eg London, Dover, Liverpool, Tyne, Tees, Forth and Clyde. If new powers are to be taken, therefore, the Defence Secretary would like them to be comprehensive.
4. When hostilities were imminent, sweeping powers would have to be taken under an Emergency Powers (Defence) Bill. Ports would then be fully covered. But in the Ministry of Defence view this might well come too late. It is certainly true that there could well be tension at that stage between the



military need for special powers and the political need not to appear to be war-mongering. The Bill, which exists in draft, is a pretty blunt instrument; and this will not be wholly remediable even when a more flexible draft is available, which is bound to take time.

5. A further cause for Ministry of Defence concern is that the 1981 Transport Act, being designed to enable BTDB and Sealink ports to be privatised, may lead to some of them being acquired by foreign interests. In the case of Sealink Ministry of Defence Ministers have written to the Department of Transport to make clear that they would not be happy to see this happen unless reserve powers of direction were available.

6. For all these reasons the Defence Secretary wishes to include suitable powers over (all) ports in the next appropriate legislative instrument. This means the Transport Bill B, which is expected to be introduced on 28th January (L Committee will consider it on 27th January) but may slip further. If this is agreed, instructions will have to go at once to Parliamentary Counsel so that the introduction of the Bill is not delayed. (The Transport Financial Provisions Bill would not be a suitable vehicle, and is in any case already before the House.)

7. The Secretary of State for Transport is opposed to including powers of direction in a Transport Bill this Session, since it would cause him embarrassment to reinstate a power which has already been abandoned and to extend it to all ports in the United Kingdom. He maintains that the port authorities have always co-operated fully in defence planning and would regard powers of direction as unnecessary. He may also argue that before publishing a Bill with new reserve powers he would need to consult port authorities, which might mean delaying the B Bill's introduction. But consultation should not take more than a month, and should therefore be complete by about 28th January even allowing for Christmas.

8. Finally, if reserve powers are to be taken contrary to his wishes, the Secretary of State for Transport may argue that they could not be confined to BTDB and Sealink ports, as in the status quo ante, since in current circumstances that would look like the imposition of discriminatory servitudes on those ports which the private sector are being invited to acquire.



HANDLING

9. You will wish to invite the Defence Secretary to introduce his paper, and then ask the Secretary of State for Transport for his views. You will also wish to invite the Home Secretary to comment, in view of his Department's general responsibility for emergency planning. Points to establish in subsequent discussion are -

- a. Are the proposed powers really necessary? What would they enable the Government to do which could not be done in their absence? How important is it to be seen to have them, for the sake of our relations with NATO and in particular with the Americans? Could lack of them create the impression that the Government were less than whole heartedly committed to the speedy reinforcement of the Alliance's forces in Germany if the international situation deteriorated? The Lord Privy Seal should comment on this. Is there a risk that, in an international crisis, the Emergency Powers (Defence) Bill would be passed too late, because it would be regarded as too conspicuous a sign that the Government were making active preparations for war?
- b. Are powers of direction needed for all United Kingdom ports? What would be the implications of applying them only where they previously applied ie to BTDB and Sealink ports? Would it be sufficient if steps were taken to ensure that these ports remained in British ownership if privatised?
- c. Would the ports authorities object to the proposed powers? Should they be consulted before we publish any Bill which included such a provision? How long would that take?
- d. If the Committee agree that statutory powers are necessary, when would be the best opportunity to take them? Would it be likely to stir up controversy in Parliament to include them in the Transport B Bill and thus make that Bill's passage more difficult and lengthy? On the other hand, might not a Transport Bill this Session be the natural place for a measure which simply tidies up a situation arising primarily from the Transport Act passed in the last Session? If consulting the ports authorities cannot be completed before First Reading on 28th January,



could the reserve powers provision be added in during the Committee Stage? Alternatively could First Reading be delayed by a week or two? The Lord President should comment. The Home Secretary could also explain why it would not make sense to await the eventual redrafting of the Emergency Powers (Defence) Bill.

CONCLUSION

10. Subject to the discussion, the Committee might be guided to agree
 - a. that reserve powers of direction over ports should be restored and that they should preferably be extended to apply everywhere in the United Kingdom;
 - b. that suitable provision should be included in this Session's Transport B Bill, if this would not be likely to cause particular controversy in Parliament and thus delay the Bill's passage.

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