Prime Minister

John Hoskyns agrees with these comments. Another E meeting seems unnecessary. Do you agree? (Subject to the views of colleagues) Should I take up Andrew Duguid's points in a private secretary letter? Yes MCS 14/1

13 January 1982 (1)

MR SCHOLAR cc Mr Hoskyns

INDUSTRIAL RELATIONS LEGISLATION

1. Norman Tebbit has now circulated his final proposals in the light of the most recent consultation exercise. He obviously hopes to clear outstanding issues by correspondence, rather than a full-blown discussion at E - at which there must be some risk of an attempt to unpick some of the main proposals that were settled in November.

attached

2. So far, I have only been able to talk in general terms with John Hoskyns - who is out this afternoon - but I think he would agree that a further E discussion ought not to be necessary. There are, however, a few points in Mr Tebbit's proposals to which we would like to draw the Prime Minister's attention:

overtaken MCS

(a) Changes in compensation arrangements. There have been quite widespread expressions of concern by employer organisations about both the proposed level of compensation in unfair dismissal cases and the issue of contributory fault. We think Mr Tebbit's changes represent a sensible response.

(b) Periodic review ballots. We have been told privately that, despite some attempted backsliding by CBI officials, the CBI Council was absolutely firm about the importance of revalidation of closed shops. Mr Tebbit proposes to go ahead with this, but to allay employer nervousness about it by allowing an initial period of 2 years rather than one before the first ballot needs to be conducted. This requires a difficult political judgment. Given 2 years, most employers will probably wait 2 years before attempting to conduct a review ballot. This means that very few ballots will have been conducted before the next Election. This will look to the Government's supporters as if it is pulling its punches. It will be hard to justify, other than by saying that it meets a general request from employers.

Against this, however, if the first ballots are required within twelve months of Royal Assent, we may find that not many companies will actually have conducted them by then. They may wait until unfair dismissal cases are actually brought, new levels of compensation are paid, and they then feel obliged to conduct the ballot. No doubt the unions would

try to cite a lack of ballots within twelve months as evidence of the "unworkability" of the new legislation. Personally, I think it would be better to require ballots within twelve months. Many companies will sit on the fence until unfair dismissal cases oblige them to get moving. There is strong public support for measures that weaken the closed shop. Public attention on this issue should be politically advantageous.

(c) Ballot threshold. Mr Tebbit proposes that a closed shop should be protected if it is supported either by 80% of those covered or 85% of those voting. We think that as a matter of principle, the percentage should be related to all those affected. That way, apathy is used as a weapon for weakening closed shops. It also makes it more difficult for unions and compliant employers to arrange a vote in circumstances where most of those voting are those who can be relied upon to support the closed shop arrangements.

(d) Removing immunity from industrial action directed at the employment of non-union labour. In November we urged careful consideration about whether this issue should be thrust into the front line when the Act is first tested. In the light of the strong response from employers, we now think that Mr Tebbit is right to include this provision. Without it, there is every risk that union-labour-only practices will continue on the ground. Again, it is an issue that should attract public support. Mr Tebbit might retain some flexibility about the date on which this aspect of the legislation became effective, so as to avoid an early challenge involving the docks.

(e) Vicarious liability. We think it very important that the legislation should specify the conditions under which unions are liable if their own rules are ambiguous. Mr Tebbit now proposes to do this. Where the action only involves shop stewards - and receives no support from any full-time union official - the issue of union liability will not arise. Originally, we hoped to see unions required to repudiate even unofficial action of this kind, as part of a long process by which unions are made more responsible for the actions of their members. But we understand Mr Tebbit is very clear in his own mind that unofficial disputes should not be affected at this stage. His first priority is to establish the principle that unions will be liable wherever official support is forthcoming - unless it is repudiated by higher authority.

(f) Secret ballots. It has been suggested by at least one trade association that Government funds available for secret postal ballots conducted by unions should also be available to employers, for the purposes of arranging for an independent ballot, where unions refuse to carry one out. We think this might advance the cause of ballots a little. There may be a number of cases where a union will tacitly accept the outcome of a ballot - it is hard not to do so - but be unwilling to institute the ballot itself. Mr Tebbit did not take up this point - which is, admittedly, a minority suggestion.

3. If the Prime Minister would like to take up any of these points with Mr Tebbit, we can supply a draft letter.

ANDREW DUGUID