Prime Minister

The purpose of the meeting is to settle whether Standards should be done by Trade or by Industry — your meeting in December (Flag A) was inconclusive on this & since then there has been Rob[t] Armstrong's paper (Flag B). John Briffa's long paper is for background (Flag C)

21 April 1982

Policy Unit

PRIME MINISTER

DEPARTMENTAL RESPONSIBILITY FOR NATIONAL STANDARDS

You are to have a short discussion with colleagues about this tomorrow afternoon. As you know, the Policy Unit agrees with MLS 21/4 the CPRS that responsibility for standards should be transferred from the Department of Trade to the Department of Industry.

I think there is no need for me to repeat the arguments about the importance of national standards to improving UK non-price competitiveness. The point is that it is clear to us that this aim fits far more closely with the other aims of the Department of Industry than it does with the more regulatory activities of the Department of Trade. Industry, for instance, is responsible for the National Physical Laboratory, and has 230 representatives on 600 BSI Committees. It is also responsible for the Design Council. Trade are too removed from day-to-day contact with British industry to stand much chance of bringing them in successfully to the standards writing process.

JOHN HOSKYNS

Prime Minister (2)

For tomorrow's meeting

MLS 21/4

CONFIDENTIAL

Qa 05901 20 April 1982

To: PRIME MINISTER

From: JOHN SPARROW

Departmental responsibility for Standards

1. In reaching a decision on departmental responsibility, which is the purpose of your meeting on 22 April, I suggest that you consider first the purpose of British Standards. The CPRS paper on National Standards and International Trade (MISC 14(81)10) argued that Standards are there to improve the quality and design of British goods. If exploited to the full they could contribute powerfully to our industrial success. I understand that this was strongly argued at the seminar you held for Designers last December. The Department of Industry sponsors the Design Council and is responsible for public procurement policy. In our view this puts them in the best position to bring about the more effective use of Standards.

2. ACARD is producing a report which will be relevant, and Robin Nicholson is minuting you separately about this.

3. I am sending a copy of this minute to Sir Robert Armstrong.

JS.

CONFIDENTIAL

W.0283

(2)

Prime Minister

Relevant to tomorrow's meeting

MCA 21/4

PRIME MINISTER

DEPARTMENTAL RESPONSIBILITY FOR STANDARDS

A Working Group set up by the Advisory Council for Applied Research and Development (ACARD) has been examining the area of standards and product design since August 1981. It set itself the task of exploring the part which standards play in design, and the way in which these could help to make British-designed products more competitive in international markets. The Working Group is shortly to report to ACARD. Its report is likely to raise three specific points which are relevant to your forthcoming consideration of departmental responsibility for standards and the British Standards Institution (BSI).

2. First, the Working Group points out the strong influence which design has on the international competitiveness of manufactured products. The Group's report also explains the influence of Government regulation, public procurement, and certification and approvals schemes on design and the way in which British Standards underpin all these. The Group therefore recommends that responsibilities within Government for design and Standards (currently with the Departments of Industry and Trade, respectively) should be brought together under a single Department.

3. Second, the Working Group thinks that the institutional arrangements for standards and regulation in this country are fragmented (in contrast with the position in many countries overseas) and, as a result, effort can easily be wasted through duplication or conflict. The Group considers that Departments and outside agencies, such as the BSI, between them perform most of the needed tasks, but that their policies and practices should be much more closely integrated and greatly improved in their effectiveness. The Group also thinks it crucial that the effort within Government be properly attuned to the industrial and commercial needs of the United Kingdom. The Group recommends an improvement in co-ordination between Departments, with provision for high-level advice from industry.

4. Third, the Working Group recommends that responsibilties for legal metrology and the science of metrology should also be brought together. The Department of Trade is currently responsible for legal metrology (ie the regulation, testing and approval of measuring instruments used for trade such as weighing scales and petrol pumps), while, on the other hand, the Department of Industry undertakes research on measurement standards and sponsors the instrument manufacturing industry. This is an industrial sector where British technology and equipment are well-regarded abroad. The Working Group however thinks that this sector could do better if greater publicity were given to our regulatory framework and the way it underpins the quality of goods produced. This would be more likely to be successful if a single Department were responsible for all aspects of metrology.

5. The Working Group's report has yet to be finally endorsed by ACARD, but I expect that Sir Henry Chilver will be submitting it to you in May, probably with a request to publish. Doubtless you will wish in due course to invite the responsible Secretary of State to prepare a formal response from the Government. But in view of the meeting you have called for 22 April, it seemed sensible to make you aware of the Group's thinking.

I am sending a copy of this minute to Sir Robert Armstrong and John Sparrow.

RBN

ROBIN B NICHOLSON
Chief Scientist

20 April 1982

RESTRICTED

FILE SW
Trade

10 DOWNING STREET

From the Private Secretary

MR. WRIGHT
Cabinet Office

Departmental Responsibility for Standards

The Prime Minister was grateful for your minute of 5 March, to which was attached a report by the MPO on departmental responsibility for standards.

The Prime Minister has decided to hold a meeting on this subject, and we are making arrangements here to set this up.

M. C. SCHOLAR

22 March, 1982

RESTRICTED

RESTRICTED

FILE SW

10 DOWNING STREET

From the Private Secretary

22 March, 1982

Departmental Responsibility for Standards

The Prime Minister was grateful for your Secretary of State's minute of 18 March, to which was attached a report on national standards and international trade which had been produced by an inter-Departmental group of officials.

The Prime Minister wishes to hold a meeting to discuss this matter. We are making arrangements to set up such a meeting after Easter.

I am sending a copy of this letter to John Kerr (Treasury), Jonathan Spencer (Industry), David Wright (Cabinet Office) and Gerry Spence (Central Policy Review Staff).

M. C. SCHOLAR

John Rhodes, Esq.,
Department of Trade

RESTRICTED

→ OF pps pc
MCS 22/3

2 MR'S · C

(2)

Prime Minister

I am glad that I had not recorded your response to the report before this came in. I will now have the meeting set up, as you requested.

MCS 18/3

PRIME MINISTER

STANDARDS

I understand that you are currently considering the question of Departmental responsibility for standards.

It seems to me very important that whoever does the work we should all be clear about the priorities in our policy. You may find it helpful, therefore, to have the attached report on national standards and international trade which has been produced by an inter-Departmental group of officials chaired by the Department of Trade. It sets out very clearly the tasks that face us and its recommendations have my full support.

I am copying this minute to all members of MISC 14 and to Sir Robert Armstrong.

WJB

WJB

Department of Trade
1 Victoria Street
London, SW1H OET

18 March 1982

NATIONAL STANDARDS AND INTERNATIONAL TRADE

REPORT OF THE AD-HOC GROUP OF OFFICIALS ON FOLLOW-UP TO CONCLUSIONS OF THE MISC 14 COMMITTEE ON MISC 14(81)10

Note by the Chairman

The Group, which included representatives from the Treasury, CPRS, the Departments of the Environment, Industry, Employment and Trade as well as the Health & Safety Executive, was asked to advise on how best to implement the CPRS recommendations in MISC 14 (81) 10 and on certain related matters.

2 Our Report, which is agreed, is attached. It is inevitably long and detailed. This note provides an introduction and summary and seeks to bring out our principal conclusions and recommendations. In some cases I make comments which, although in every case reflect the view of a majority of the Group, might not, at any rate as briefly expressed, carry every member unreservedly.

3 There are two general points that need to be made at the outset:-

(a) we are aware that the question of Departmental organisation on standards is under review. Our Report takes the present organisation as it is;

(b) we have not, certainly in the time available, always been able to agree firm proposals. In some cases further study is essential. And on some matters sincere and substantial differences of view between Departments have yet to be resolved although these are not of a nature that would inhibit substantial progress this year.

4 As our work progressed it became clear that important moves towards the German approach to standards could be made within existing legislation. The Health and Safety at Work Act, 1974, and Consumer Safety Act, 1978, in particular offer further potential for links between the regulatory system and the standards system. Additional moves in that direction could be made within the existing British framework by fairly limited provisions in new legislation which is already in contemplation for building controls and for consumer protection. We were also conscious that to try to transplant the whole German structure would be a very major and lengthy operation. The German system involves not only a legal structure, but aspects of organisation and society which have evolved over 70 years. We therefore concentrated on the substantial progress that can be made within the broadly existing UK institutional and legal framework, and did not seriously address the question whether, at a later date, there would be advantage in further legislation to create a more unified framework.

5 The first requirement is to get it over publicly that the Government wants to enhance the status of standards in law and in their practical application. The Government must set an example. And so our first broad recommendation, in Part II, is that the Government should conclude an Agreement with the British Standards Institution on the lines of the existing Agreement between the German Government and the equivalent German institution (DIN). In such an Agreement the Government would undertake two things. First, to make much wider use of standards in regulatory functions. And, secondly, that the Government would use standards and independent certification in procurement (with public authorities urged to follow suit). These undertakings could not be unqualified. But the objective would be to enhance the status of standards - the "halo effect". Such an Agreement would need to be published and would be the peg on which the new policy would be hung.

6 In Part IV, we discuss what is involved in the Government making greater "use" of standards. We make it plain that many British standards are not yet suitable for direct use in regulatory processes. Nevertheless, if the intention were clear, those responsible for drafting standards would be obliged to recognise that the standards they are preparing may well come to have real bite. The BSI is now geared to operate in this way. But it needs the full co-operation of standards-makers. It is important to underline that we do not propose extending the areas covered by mandatory standards. Our intention is, rather, that those who comply with standards will have a greater certainty of where they stand, especially in the matter of legal proceedings.

7 In Part IVB we recommend that existing proposals for official recognition of certification bodies should be progressed. The purpose of this is, put simply, first to give help to buyers by identifying those "seals of approval" which have real substance. And, secondly, to make it easier to negotiate bilateral arrangements under which our products would be accepted as meeting the requirements in overseas markets (and theirs in our markets). Some form of national official mark might materially assist this. It is clear, indeed, that there is great uncertainty in the Group about whether a new national mark could quickly or automatically have the same significance as the German GS ("safety-tested") mark. This must be examined, but need not inhibit a lot of immediate further work on official recognition of certification bodies.

8 In Part V, we examine ways of encouraging greater use of standards by public purchasers - unhappily much of the territory covered is not new. But the proposed Government/ BSI Agreement may however provide a better focus on old ideas.

9 Also in Part V, we describe measures necessary to encourage more participation by industry, public authorities and Government officials in standards making. It is important in the proposed new approach that, because standards will be more used in regulation, greater effort will be put into their preparation. Although, a decade ago, the BSI organisation and

management left much to be desired, we wish to stress that BSI today is managed and organized in such a way as to be well able to nurture the new approach.

10 Standards systems do not stand on their own. In Part VI we consider improvements that might be made in the areas of product liability and insurance:

(a) On product liability we have not been able to do more than recommend further examination taking account of existing work in Brussels.

(b) On insurance we think that further discussions with the industry should be opened when the new policy is announced. It seems unlikely to us, however, that we shall quickly get into a position that those who comply with standards will secure significantly lower premiums. Because the insurance companies will believe that this is not actuarily justified.

11 Also in Part VI we examine, as we were particularly requested to do, the use of controls at the ports for enforcement purposes. There can be no question of all imports automatically being examined for compliance with standards - certainly in the large number of cases in which standards are not mandatory. Containers, for example, are not automatically unstuffed for this or any other purpose - either in the U.K. or any other major country. It is more a question of documentation requirements. Here again more study is needed. But our approach is that where the use of goods is restricted or prohibited at home powers should be used or taken as the case may be for control at the ports. And for the Customs to be able to call up experts from relevant authorities.

12 In Part VII, we make recommendations for improving control and co-ordination in Whitehall. The essence of what we propose is that the co-ordinating official committee should be smaller, meet at a much higher level and be more fully integrated into the Cabinet Office machinery. A lower level structure will surely be necessary: not least because these must include outsiders, BSI being a notable, but not the only, example.

13 In Part VIII we discuss public presentation. The whole new initiative would need to be explained, probably in a speech by the Secretary of State and followed by a consultative document covering not only the proposed terms of the Government/BSI Agreement but many other matters referred to in our Report. We do not think it practicable to envisage the issue of a consultative document before the Autumn and the timing of the keynote speech would need to be geared to this.

14 There are several important points arising in relation to presentation:

(a) It is certain that the new policy will provoke debate and even controversy. Industry is ambivalent towards standards and a big persuasive exercise will be necessary.

(b) The direct involvement of Parliament in standards used for regulatory purposes would, over time, be reduced. Because it is disadvantageous if standards evolved by experts have subsequently to go through a Parliamentary process (which at present, for example, means that new replacement standards cannot be applied except after delay and translation into legal language). The Department of the Environment are already pointing the way to processes under which Parliament gives broader and less detailed approval. All this, too, may be controversial. Some system under which Parliament can call up particular standards may have to be retained. And we believe that what Government regulatory bodies do in matters of enforcement should be made more transparent.

(c) There can be no question of the whole exercise being viewed as based on the creation of whole ranges of new exclusively British standards. Already over a third of "British" standards are international in origin. The standards movement is intrinsically international and it is in our interests that it should remain so, and that as many standards as possible should be widely accepted internationally.

(d) The point above is of importance especially in relation to the EC Commission who may be expected to suppose, as on "marks of origin", that a new protectionism is uppermost in our minds. Very careful handling of our new approach with the EC Commission and other member states will be essential.

15 We were asked to cost our proposals. We are not able to produce any meaningful total figure. The cost of pump-priming the scheme for recognition of certification bodies might involve an additional £½ million spread over 3 years. For the rest our proposals mostly involve the same people doing the same things in different ways. To the extent that there are more and better standards, additional costs and effort will fall upon Government and even more perhaps on industry. Current Government spending on standards-making is of the order of £5 millions a year. We doubt whether the new approach, as it developed over time, would as much as double this figure.

16 It is unusual to name officials, but we have received such splendid help from Mr Richard Allpress in bringing together a mass of very difficult detail, that we wish to acknowledge our debt to him.

17 A summary of all our conclusions and recommendations for action or study will be found immediately below and, after this, our report.

R W GRAY
DEPUTY SECRETARY
DEPARTMENT OF TRADE

15 March 1982

CONCLUSIONS AND RECOMMENDATIONS FOR ACTION OR STUDY

Arising from PART II: AN AGREEMENT WITH BSI

ACTION 1. Department of Trade, in consultation with purchasing and regulatory departments, to prepare a draft agreement between Government and BSI along the lines of that between the German government and DIN, as part of a wider standards package.

Subsequently, departments sponsoring other public purchasers to seek to influence these to conclude their own bilateral agreements with BSI.

(Page 4)

Arising from PART IV: TOWARDS A 'GERMAN' SYSTEM

ACTION 2. The Health and Safety Commission should be asked to consider the issue of guidance to manufacturers on its enforcement policies, giving greater clarity to the present enforcement practice of the Executive, so as to emphasize its increasing general reliance on standards and to systematize the issue of guidance on particular classes of goods with particular reference to the standards acceptable in each field.

(Page 8)

ACTION 3. Departments responsible for regulatory bodies to establish whether these make informal use of standards, with a view to persuading them to publish a list of the standards concerned.

(Page 8)

ACTION 4. The HSC should be asked to consider to what extent it might reasonably increase the emphasis in enforcement policy on initial integrity by administrative means.

(Page 8)

ACTION 5. Regulatory departments and bodies should consider with BSI and major industrial interests (manufacturers and users) how the two public consultation procedures might be linked or merged, particularly where a standard is likely to be the subject of a 'deemed to satisfy' reference in subordinate legislation.

(Page 10)

ACTION 6. The Health and Safety Commission should be asked to consider whether it could make public an intention, whereby standards in the formulation of which HSE had participated without serious reservation would henceforth be a point of reference in its enforcement policies and would be liable to be proposed for formal recognition under s 16 of the HSW Act 1974. In cases

where, for cogent reasons, HSE found it difficult to recognise particular standards it should be prepared to make known those reasons.

(Page 10)

ACTION 7. Department of Trade with other interested departments and the Health and Safety Commission should consider whether general recognition of the whole body (or a large part thereof) of British Standards under s 16 of the HSW act would be practicable; and should further consider the case for taking similar action in other areas.

(Page 11)

ACTION 8. Regulatory bodies and departments should be reminded of the decision by E(EA) Ministers in May 1980 that greater use should be made in regulations of standards and codes of practice.

(Page 11)

ACTION 9. The HSC should be invited to study with the Department of Trade, Employment, and the Environment the feasibility of using the prohibition provisions of the Consumer Safety Act 1978 in respect of articles for use at work.

(Page 12)

ACTION 10. On the assumption that the Department of the Environment's proposal for a new system of "approved documents", as set out in Cmnd 8179, will receive a favourable response from industrial interests on further consultation and from Parliament, the Department of Trade should consider exercising the similar power already available under the Consumer Safety Act 1978.

(Page 13)

ACTION 11. Dept of Trade, with interested departments, to consider urgently whether they might bring forward proposals for introducing a legal concept along the lines of "sound and modern practice" as part of their current review of the Consumer Safety Act 1978. Other departments with regulatory powers should consider whether these might be similarly amended as opportunity offers.

(Page 14)

ACTION 12. Dept of Industry, in consultation with other interested departments, to develop its proposals for more unified arrangements for recognising certification bodies and to cost them. This should involve consideration of an associated mark.

(Page 16)

Arising from PART V: GREATER USE OF STANDARDS THROUGH IMPROVED INPUT

ACTION 13. Department of Industry to coordinate an approach by sponsor departments (other than MOD and DOE/PSA) to their large public purchaser "clients" aimed at bringing home to them that participation in the national standards-making process and use of national standards can bring benefit in the form of

(i) cost savings (cf the experiences of PSA and MOD);

(ii) improving and lending weight to the corpus of recognised standards, which in turn may bring

(iii) industrial and trading advantages.

(page 18)

ACTION 14. Department of Trade and other interested departments to continue to work closely with BSI on improving the composition of BSI Technical Committees. It should be the aim to persuade industrial interests (particularly users) that their representation in the standards-making process should reflect an intention to use the standards concerned wherever appropriate and a recognition that standards may subsequently be used for regulatory purposes.

(page 19)

Arising from PART VI: OTHER ACTION IN SUPPORT OF STANDARDS

ACTION 15. Department of Trade to look at the role of standards in the German system of product liability and, taking account of current work on product liability in Brussels, to advise on the scope, if any, for emulating the German practice i n the UK.

(page 20)

ACTION 16: The Department of Trade and other interested departments should consider the conditions for a renewed approach to the insurance market with a view to an increased linkage of insurability and certification, in the context of the new policy.

The Health and Safety Commission should be invited to examine, as the policy develops, the scope for extending the areas of activity of 'competent persons' by means of eg recommendations in approved codes of practice - account to be taken of the reception accorded to Department of the Environment's proposals for competent persons in Cmnd 8179.

(page 22)

ACTION 17. Department of Trade in conjunction with Customs and Excise and the Foreign and Commonwealth Office to survey the extent to which other countries carry out port controls to check compliance with technical requirements.

Taking into account the results of the above survey, Department of Trade in conjunction with other interested departments, but especially Customs and Excise and (if the HSC agrees) HSE, to examine the case for controlling imports at the ports for compliance with technical requirements. The study to cover also likely manpower costs and Community implications.

Departments considering new legislation or amendments to existing legislation which may impose technical requirements, to ensure that provision is made for the prohibition of imports under appropriate conditions; and for the delegation of enforcement responsibility.

(page 25)

Arising from PART VII: IMPROVING GOVERNMENT'S INTERNAL COORDINATING MACHINERY

ACTION 18. There should be a new inter-departmental committee on quality assurance and standards under Cabinet Office auspices.

(Page 26)

Arising from PART VIII: PRESENTING THE NEW INITIATIVE ON STANDARDS

ACTION 19. Department of Trade with other interested departments to draft a key-note speech covering in broad outline the proposed new policy on standards; to propose a programme of wider Ministerial and official activities in support of the initiative; and to set in hand the preparation of a consultative document.

(Page 28)

STRUCTURE OF REPORT

I. THE CPRS INITIATIVE

II. AN AGREEMENT WITH BSI

III. THE GERMAN SYSTEM

IV. TOWARDS A 'GERMAN' SYSTEM

A. Use of standards for regulatory purposes

i. Action within existing legislation

a. Administrative practice

b. Greater use of subordinate legislation

- deemed to satisfy reference
- mandatory reference

c. Prohibition power

ii. Action involving amendments to existing legislation

- the 'approved document' proposals
- a new concept of 'sound and modern' practice

iii. New imitative primary legislation?

B. Unified arrangements for assessing and accrediting certification bodies; and the introduction of a national mark

V. GREATER USE OF STANDARDS THROUGH IMPROVED INPUT

- public purchasers
- government
- industry

VI. OTHER ACTION IN SUPPORT OF STANDARDS

- product liability
- insurance and other legal aspects
- port controls

VII. IMPROVING GOVERNMENT'S INTERNAL COORDINATING MACHINERY

VIII. PRESENTING THE NEW INITIATIVE ON STANDARDS

NATIONAL STANDARDS AND INTERNATIONAL TRADE

REPORT OF THE AD HOC GROUP OF OFFICIALS IN FOLLOW-UP TO CONCLUSIONS OF THE MISC 14 COMMITTEE ON MISC(14)(81)10

I. THE CPRS INITIATIVE

1. CPRS looked at the organisation of standards-making and the (legal) status of standards (1) in the UK to see how we might emulate some of our major competitors in using these, modified as necessary, to improve the non-price competitiveness of UK products. Noting W. Germany's experience, CPRS suggested that compliance with good standards could improve the quality, reliability and safety of a country's products; and, particularly when such compliance was backed up by certification by a government-recognised body, such products were more easily sold in world markets. CPRS concluded, therefore, that we should seek to raise the status in this country of standards that are recognised in the international market place and to promote approval and certification arrangements which enhance UK products' prospects at home and abroad. CPRS thought that most of the legal and institutional elements necessary to the sort of approach adopted by W. Germany already existed in the UK, but they needed to be pulled together to give them similar strength and coherence.

2. In what follows, we examine how the practical effects of the German approach might be achieved here, whilst recognising that the German institutions and legal mechanisms could not simply be reproduced here.

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(1) The term "standard" as used in this report has the following principal meanings:-

i) "standard product specification", relating for example to the design construction and testing of products;

ii) "codes of practice", relating for example to standard procedures of installation, operation and maintenance of equipment;

iii) "standard management systems", relating for example to quality assurance systems in manufacture.

The particular meaning of the word standard should generally be clear from its context in the report.

3. Since the German system has safety as one of its main objectives (indeed, since January 1980 the Law on Technical Equipment which CPRS saw as central to the system has officially been known as the Equipment Safety Law), our study naturally puts emphasis on the possibility of using or expanding our own safety-related measures - notably the Health and Safety at Work Act 1974 (HSWA), the Consumer Safety Act 1978 (CSA) and the Building Regulations - so as to enhance the status of standards and the practice of certification.

4. The German system is only partly a matter of legislation; we describe it more fully below (paragraphs 11-16). It has, as CPRS pointed out, developed over a very long period and a key element is a willingness on the part of German industry to accept its constraints, to make it work and to see it as helping them to raise their flag over what is sound, safe and German. Though many British firms support the work of BSI and there is a growing demand for official certification for trade purposes, there is at present no such collective appreciation within British industry of how the various elements which the Germans successfully combine could work to their own advantage. Indeed, there is a suspicion, particularly by users and importers, that a more positive approach to standards backed by regulatory bodies could constrain their purchasing and limit their manufacturing options. As we point out, consolidation in the German direction will involve a long haul and the overcoming of a good deal of inertia; and the attempt will only succeed if there is understanding and support on the part of industry for what we are after. We think it will be necessary to test the ground carefully and one of our main recommendations (below) is for a consultative document or green paper.

II. AN AGREEMENT WITH BSI

5. The British Standards Institution (BSI) have suggested that a dramatic impact on the use of standards by UK manufacturers and on the level of interest in standards-making could be achieved without the need for massive new legislation, simply by the conclusion of an agreement between the Government and the BSI along the lines of that which exists between the Federal Government and the German standards body, the 'Deutsches Institute für Normung' or, as it is better known, DIN (copy at Annex).

6. Central to this agreement are:

i. an undertaking by DIN to ensure that its standards are capable of being quoted in legislation and regulations, with a presumption that the Federal Government will use them in this way(2);

ii. an undertaking by the Federal government that, subject to international obligations, it will purchase to appropriate DIN standards and that it will seek to influence other public purchasers to do the same.

7. BSI have correctly identified the areas - regulatory activities and public purchasing - where Government action is vital, if the cause of standards is to be furthered. However, in that a considerable legal and institutional infrastructure underpins the agreement between the Federal Government and DIN, the speed and extent of progress towards the German position which such an agreement on its own could bring about should not be overrated.

8. Concluding and implementing such an agreement would not be simple. Nevertheless, we see considerable advantage in having one, providing as formal and precise an understanding as possible of the rights and obligations of the signatories. First, because of the pressure this would put on regulatory and purchasing departments to make greater use of standards. Second, as a peg upon which to hang publicity for the Government's new initiative on standards. And third, not least because of the discipline upon the standards-making process which we should wish BSI to accept. In particular, we should wish an agreement to indicate a commitment to "good

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(2) The obligation on the Federal Government is not absolute. The Federal Government reserves the right to formulate its own technical requirements for use in legislation, for the purpose of enforcing laws or if they are "otherwise required in the public interest". Should the Federal Government introduce a technical regulation then DIN undertakes "to amend, withdraw or withhold publication of any standard which may be contrary to such regulation".

practice"(3) rather than merely current average practice. On the other hand, we should need to avoid committing Government to give status only to parochial national standards.

9. We conclude that an agreement between BSI and the Government should not be concluded in vacuo but should instead form part of a wider standards package.

10. We doubt that such a bilateral agreement could be made effective in respect of other large public purchasers eg nationalised industries and local authorities. For example, the Secretary of State for the Environment would have no power to bind the latter. Nor would an agreement between BSI and the Local Authority Associations have any binding effect on individual local authorities, though it might well be of "psychological" value, in that if associations were prepared to sign, a substantial proportion of authorities might be prepared to follow. However, we note that DIN has agreements with the Länder, as well as the Federal Government. We consider, therefore, that the best approach might be if Government were first to set the example; and then seek to influence other bodies to follow suit by concluding their own bilateral agreements, if possible along model lines.

ACTION 1. Department of Trade, in consultation with purchasing and regulatory departments, to prepare a draft agreement between Government and BSI along the lines of that between the German government and DIN, as part of a wider standards package.

Subsequently, departments sponsoring other public purchasers to seek to influence these to conclude their own bilateral agreements with BSI.

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(3) This would not preclude BSI Technical Committees from evolving graded standards where the need for several levels clearly exists and should not be ignored and rolled into one "compromise" level. Otherwise, there is a danger that standards will either be of the "lowest common denominator" variety or over-specified; and they will either not be used at all or only by a limited number of users and manufacturers.

III. THE GERMAN SYSTEM

11. The CPRS report highlighted the central role in the German Standards system played by the Law on Technical Equipment or, as it is now known, the Equipment Safety Law. This law permits the putting into circulation or display of equipment for use at work, in the home (including toys) and in leisure activities only if they conform to the "generally recognised rules of technology" and the safety-at-work and accident prevention regulations, so that people using them properly are protected against risk to health and safety. Deviation from the "generally recognised rules of technology" is permitted only insofar as the same level of safety is otherwise ensured.

12. The Equipment Safety Law does not, then, give direct support to standards as such. "Generally recognised rules of technology" are essentially rules agreed by experts in the field to be the correct response to specific technical problems (the Anglo-Saxon equivalent might be 'good practice' or'sound and modern practice'. The concept was established by the German courts in 1910 and is used in a number of laws and statutory instruments to impose technical requirements, whilst at the same time avoiding the necessity of specifying these in detail.

13. In our view, it is the wide use of the concept of "generally recognised rules of technology" which is largely responsible for the so-called "halo effect" on German standards generally and not the fact that some standards are referred to in legislation. The effect comes about in the following way. A manufacturer may not be a technical expert in a relevant field but he must nevertheless avail himself of expert knowledge if he is to meet the requirements of the various laws. The Equipment Safety Law therefore requires the German Ministry of Labour to list those safety-at-work and accident prevention regulations and also the technical standards in which the generally recognised rules of technology are presumed, for the purposes of enforcing the law, to have been embodied. The General Administrative Regulation of the Equipment Safety Law instructs the enforcement authorities (the Factories Inspectorates of the Länder) to regard them in this light and the standards concerned are given de facto 'deemed to satisfy' status. It is but a short step for the small German manufacturer to assume that German standards generally embody the recognised rules of technology and that by complying with these he can expect to meet the requirements of the various laws; and in this he will usually be right.

14. The Equipment Safety Law is thus the legal embodiment of a long-standing conviction that German practice is "best" and that what is sound is also safe. To avoid the prohibition powers which are provided to stop goods not meeting the rules of technology from being put into circulation, to get his goods insured and to escape liability in the courts in case of accident, a purchaser will insist on a certificate of conformity and this is most easily available where goods conform to a standard. It is not surprising that importers sometimes find it hard to break into this system or that German industry puts a high premium on keeping it and the supporting corpus of standards in first-class working order.

15. It is the lack of these supporting systems, which have grown up in Germany over a long period, that makes it so difficult to replicate the German apparatus here, as it were, in a single leap. Even if we were to do so, we would have to legislate in stages to specify that goods could not be circulated unless they conformed to "sound and modern practice" as defined in eg standards. As we mention later, the Department of Trade is considering the implications of introducing such a concept into the Consumer Safety Act.

16. We are conscious that the Equipment Safety Law, is just one of a number of mechanisms which rely on the generally acknowledged rules of technology and underpin the status of standards in Germany. If it is wished to replicate the German system in its entirety, as well as a major effort to revise, update and extend the corpus of British Standards and acceptable international standards, action in two other major areas would be necessary. These are:

i. the system of product liability;
ii. the system of industrial insurance

We discuss these in Part VI.

17. We have doubts, then, as to whether replication here of the German Equipment Safety Law on its own would achieve the objectives identified by CPRS for UK standards-making; and also whether a convincing replica of that law could be erected in the absence of a legal concept such as 'the generally acknowledged rules of technology'. Subject to these reservations, however, we accept CPRS's point that many of the legal and institutional means of the German approach are already to hand. In particular, we have two relatively new and powerful pieces of legislation in the shape of the Health and Safety at Work Act 1974 and the Consumer Safety Act 1978. We suggest in Part IV how these and other legislation might be employed to reproduce a mechanism similar to that of the German Equipment Safety Law.

IV. TOWARDS A 'GERMAN' SYSTEM

18. We look at how such a move might be achieved under the two headings identified by the BSI as central to the furtherance of standards in the UK, namely:

a. use of standards for regulatory purposes;
b. use of standards in public purchasing

A. Use of standards for regulatory purpose

19. MISC 14 preferred that officials should concentrate initially on what could be done to move the UK towards a 'German' system using existing legislation. Action to underpin standards in the UK by amendments to existing legislation need not necessarily be ruled out, however. Legislation in two important standards areas - consumer safety and building control - is currently under review.

20. The sort of approach, which may be achievable by action on these two points, would have the following main features:

- legislative support to standards on a mandatory or 'deemed to satisfy' (or similar) basis;

- power to prohibit the putting into circulation of articles which do not conform to 'sound and modern practice' or to other legitimate requirements or regulatory authorities;

- recognition of certification bodies and test houses for the purpose of administering regulations and the introduction of a national mark.

21. Such an approach would be a move in the right direction ie towards a more coherent system which might be expected to reproduce a good many of the practical effects and benefits of the German approach. In the course of time, and if pursued over a wide enough field, action under such an approach could reinforce considerably the existing body of standards and provide an inducement to its renewal and expansion by manufacturers and users - quite aside from the help it would give both industry and the regulatory bodies concerned in enabling the latter to clarify their requirements.

(i) Action within existing legislation

(a) Administrative practice

22. Standards may be used informally by regulatory bodies. The Health and Safety Executive is often pressed by manufacturers to clarify its requirements in the design of equipment and plant. HSE does this in a number of ways. It is currently assisting some 350 British Standards Committees. Through numerous joint industry bodies it is promoting the adoption and use of safety standards or elements of a less formal kind. Over 100 standards are already referred to in non-statutory guidance material and, as a matter of practice HSE has not prosecuted for breach of statutory duty as regards safe design in any case where the design has been to a British Standard and has let it be known informally

that it is extremely unlikely that it would do so. More significantly HSE inspectors use hundreds of product standards (not necessarily British Standards) informally in providing guidelines on factory visits and as yardsticks against which to measure the design of equipment.

ACTION 2. The Health and Safety Commission should be asked to consider the issue of guidance to manufacturers on its enforcement policies, giving greater clarity to to the present enforcement practice of the Executive, so as to emphasize its increasing general reliance on standards and to systematize the issue of guidance on particular classes of goods with particular reference to the standards acceptable in each field.

23. We are not aware of any other regulatory bodies which make informal use of standards on such a scale. However, we consider that the various bodies themselves should be asked about their practices and that if there are further instances, attempts should be made to persuade the regulatory bodies concerned to publish which standards are involved.

ACTION 3. Departments responsible for regulatory bodies to establish whether these make informal use of standards, with a view to persuading them to publish a list of the standards concerned.

24. There may also be scope for changes in administrative practice, to give this a more 'German' slant ie emphasis on initial integrity and compliance with standards. This is particularly relevant to the HSE, where the emphasis is on 'safety in use'. HSE's existing powers under the HSW Act are in fact very wide and although in theory limited to safety at work Section 3 is so wide and pervasive that prima facie HSE could enter almost any premises and initiate a wide range of action in the name of safety. HSE would probably accept that a case could be made out for greater emphasis on initial integrity but consider that its own statutory purposes would probably not be better secured by adopting some new approach. Relatively few industrial accidents arise from poorly designed equipment as opposed to the wide variety of hazards that exist in industry and there are, therefore, limitations on the resources which HSE would find it cost-effective to spend on work connected with initial integrity of plant or standards-making. Nevertheless, there should be some room for further movement within available resources, particularly if certain legal changes (see below) can be made and we consider it worthwhile looking at what could be done.

ACTION 4. The HSC should be asked to consider to what extent it might reasonably increase the emphasis in enforcement policy on initial integrity by administrative means.

(b) <u>Greater use of subordinate legislation</u>

25. The greater use of subsidiary legislation to underpin standards (ie by recognising them formally on a 'deemed to satisfy'

basis or by making them mandatory) will not lead to an overnight transformation of British industry but it is a lever the Government can use to nudge practices in what it believes to be the right direction. However, this course of action is not without difficulties.

26. The present corpus of British Standards is of variable quality. In some areas of application British Standards lead the field; at the other extreme, some other British Standards are technologically obsolescent. They may not therefore provide an entirely suitable basis for early movement to secure adherence to standards. Two points here. First, we recognise that a change of approach to standards-making on the part of British industry will be necessary if we are to improve our general industrial performance via standards and we therefore make recommendations elsewhere on how the inputs by industry and Government to British Standards might be improved. Second, the aim of the present exercise is not to give status just to British Standards, regardless of their quality, but to secure greater adherance to standards which hold sway in world markets, whatever their provenance. This could mean that an even larger number of British Standards might need to be of international or foreign origin, though we suspect there will be a preference in some BSI Technical Committees to evolve, as far as possible, exclusively British Standards.

27. Recognising standards on a 'deemed to satisfy' basis - which can be done under the Consumer Safety Act 1978, the HSW Act 1974 and through the Building Regulations (made under s 61 of the Public Health Act 1936 as amended by s 61 of the HSW Act 1974) - is unwieldy, which lessens its usefulness as a means of underpinning standards more widely.

28. The difficulties experienced by the Department of the Environment in recognising British Standards and BSI Codes of Practice under the Building Regulations may serve as an example of what we mean. By using such standards and codes, builders can be sure that they will not be accused of contravening the Building Regulations but they can choose to satisfy these in some other way. The drawback to the system lies in the fact that as the Building Regulations are Statutory Instruments they are subject to strict constitutional rules as to what is "proper". Consequently, they are drafted in terms more relevant to the law than manufacture and construction and there may be long delays before new or amended standards are recognised. At times this may leave a discredited standard 'deemed to satisfy' whilst its improved successor is not recognised. This problem is common to the 'deemed to satisfy' routes under all the legislation we have considered.

29. Department of the Environment have now virtually given up trying to follow this route; and in a recent consultative document (Cmnd 8179: The Future of Building Control in England and Wales) they proposed a new system for approving standards etc. We discuss their proposals below at paragraphs 37 to 43.

30. The three main pieces of legislation we have considered all require the relevant Secretary of State or regulatory body to consult with interested parties before a standard is given legal status. This costly process, which would also be obviated under the Department of the Environment's proposals, duplicates the consultation procedures which BSI carries out before it adopts a standard. Moreover, it is quite often the case that, because

industry frequently attaches insufficient importance to standards-making, important interests may fail to participate in the process. A standard may be adopted by BSI yet will not prove acceptable to industry more widely for reference in legislation and such concurrence is a sine qua non for a standard's endorsement by the HSC, on which both sides of industry are represented(4). We recommend at paragraph 60, in the context of improving the input to BSI Technical Committees that those involved in drawing up standards should recognise that these will subsequently be used for regulatory purposes, where appropriate.

ACTION 5. Regulatory departments and bodies should consider with BSI and major industrial interests (manufacturers and users) how the two public consultation procedures might be linked or merged, particularly where a standard is likely to be the subject of a 'deemed to satisfy' reference in subordinate legislation.

31. Despite these difficulties with the 'deemed to satisfy' route, HSE is committed to its greater use. Section 16 of the HSW Act provides a procedure for the formal recognition by the HSC of standards and codes of practice, which have the effect of throwing the onus of proof of safety on users of non-recognised articles who may be prosecuted. Provided that the present considerable reluctance of industrial users to see the field of choice modified in the way proposed can be overcome, the recognition under s 16 of quite a substantial body of existing standards would almost certainly be possible in the course of time, though at some resource cost to HSE.

32. Bearing in mind the proposed agreement with BSI, the group considers that wherever HSE participates in the making of standards, it should consider doing so on the basis that the safety aspects of the standard may subsequently be recognised, whether by the HSC under s 16 or less formally, depending on the case. Other participants in the standards-making process should be made aware that such is the case.

ACTION 6. The Health and Safety Commission should be asked to consider whether it could make public an intention, whereby standards in the formulation of which HSE had participated without serious reservation would henceforth be a point of reference in its enforcement policies and would be liable to be proposed for formal recognition under s 16 of the HSW Act 1974. In cases where, for cogent reasons, HSE found it difficult to recognise particular standards it should be prepared to make known those reasons.

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(4) A pilot exercise to approve just 10 standards in this way which HSE is carrying out is at a standstill, largely because the CBI's membership is split. The Secretary of State for Industry has written to the CBI in order to secure some movement.

33. Consideration is being given by HSE to the possible use of s.16 to give a generalised recognition to the whole body of British Standards, such that observance of a standard, at least to the extent that it dealt with safety, would be a way of complying with requirements under s.16 of the HSW Act, so long as the equipment was being properly used. For example, one approach might be to recognise under s.16 a general code of practice requiring, so far as was reasonably practicable, that new and replacement investment should be to recognised standards. HSE inspectors might then challenge 'unsafe' articles for which recognised standards existed and require users to defend themselves by producing evidence as to safety or manufacture to equivalent standards.

ACTION 7. Department of Trade, with other interested departments and the Health and Safety Commission, should consider whether general recognition of the whole body (or a large part thereof) of British Standards under s.16 of the HSW Act would be practicable; and should further consider the case for taking similar action in other areas.

34. We have also considered whether, in terms of this initiative, there would be anything to gain from widening the present field in which specific technical requirements are imposed by reference to standards in legislation. We are clear that this would be seen as an extension of mandatory standards simply for their own sake and that such an increase in Government interference would be virtually impossible to defend in the face of the strong objections from industry which it would inevitably provoke. On the other hand, reference to standards as a means of imposing specific technical requirements clearly does help to underpin the status of standards generally. We think, therefore, that regulatory departments and bodies should be reminded (perhaps in the context of the proposed agreement between the Government and BSI) of Ministers' earlier decision (in E(EA) in May 1980) to the effect that where new or changed regulatory actions are being contemplated regulatory departments should seek to use standards or codes of practice, which are already in existence or under preparation, in preference to writing technical requirements de novo.

ACTION 8. Regulatory bodies and departments should be reminded of the decision by E(EA) Ministers in May 1980 that greater use should be made in regulations of standards and codes of practice.

(c) Prohibition powers

35. Power to prohibit the marketing, as opposed to use, of "unsafe" products is identified above as a significant feature of the German Equipment Safety Law. However, the UK position is complex. A similar power exists under the Consumer Safety Act 1978 but there are few equivalent provisions in other areas, none in

respect of construction products and effectively none in respect of equipment used in factories. For example, problems have arisen on water fittings where there is no power under the Water Bye-lawsto prevent the sale of non-complying fittings. The Water Authorities are unable to exercise adequate enforcement, particularly in the replacement market. On the industrial side, though the HSW Act provides a variety of powers in extreme cases to prevent or prohibit dangerous activities, including imports of particular classes of goods, it does not provide any readily usable discretionary power to prevent goods from being put into circulation. Moreover, the courts have not so far interpreted S.6 of the HSW Act to mean unambiguously that articles should be designed to be safe so far as is reasonably foreseeable and practicable. They have tolerated defences of unsafe plant on the ground that it was their allegedly careless or aberrant use rather than their design which was the unsafe factor.

36. The powers under the Consumer Safety Act to prohibit generally the circulation of unsafe goods or to prohibit individuals by notice from circulating such goods can be exercised by any Secretary of State and prima facie could be delegated to HSC in respect of articles for use at work. In practice, the responsibility for enforcement would also need to be looked at carefully. There would be difficulties where the same articles were supplied both for use at work and by the consumer. Nevertheless we think the legal and practical implications of such a course should be examined more closely. We note also that the same device could be used to make good the lacuna in the Building Regulations, insofar as safety is concerned. It would not, however, help in respect of the problem with the Water Bye-lawsdiscussed above ie where safety is not involved.

ACTION 9. The HSC should be invited to study with the Department of Trade, Employment, and the Environment the feasibility of using the prohibition provisions of the Consumer Safety Act 1978 in respect of articles for use at work.

(ii) <u>Action involving amendment of existing legislation</u>

37. We have noted above that legislation in two important standards areas - building control and consumer safety - is currently under review.

<u>An alternative to "deemed to satisfy"</u>

38. The Department of the Environment are proposing (Cmnd 8179) major changes in building control. One of their objectives is to obviate the problems (identified above) involved in formally recognising standards on a "deemed to satisfy" basis.

39. Cmnd 8179 proposes a new system of "approved documents". They would not carry automatic approval vis-a-vis the enforcement authorities but evidence of compliance with an approved document would be a defence in court in the event of prosecution for non-compliance with the Building Regulations. Approved documents would thus have a status roughly comparable to the Highway Code.

40. Approved documents would be designated by the Secretary of State but would not be part of the Statutory Instrument, so they would escape Parliamentary scrutiny, would be drafted in a form suited to their use and amended documents could be recognised rapidly. It is envisaged that appropriate British Standards and Agrement certificates would become approved.

41. The Secretary of State for the Environment also has it in mind to go further and propose powers to recognise "approved bodies". Relevant documents issued by such bodies would automatically become approved documents for the purposes of the Building Regulations, without requiring individual recognition by the Secretary of State. This might even extend to test or approval certificates eg BSI's Kitemark. It seems likely that only BSI and the Agreement Board would be candidates to become approved bodies.

42. The proposed system would clearly have advantages in terms of the present exercise. It would provide an alternative to the 'deemed to satify' concept, which we think may be too strong for application to the whole corpus of standards and under which standards may be devalued because of up-dating time-lags. In some people's eyes this kind of system may, however, be controversial since they may feel it would imply a dilution of Parliamentary accountability, even 'legislation by stealth'. However compliance with approved documents would in fact represent just one of a number of ways of meeting the requirements of the law and the latter would not themselves be changed when an approved document was amended. Moreover, as we have pointed out, the HSW Act already goes part of the way towards this concept. We also note that it is probably possible to designate 'approved documents' under s.1(2)(c) of the Consumer Safety Act 1978.

43. So far the new proposals have raised no objections: though here we note that the Secretary of State for the Environment envisages a further round of consultations in May at a more detailed level. Despite some potential difficulties with the new system's acceptance, the group considers that, if successfully introduced, it would represent a significant step on the road towards establishing a 'German' standards system in the UK and as such would be worth adopting in other fields.

ACTION 10. On the assumption that the Department of the Environment's proposal for a new system of "approved documents", as set out in Cmnd 8179, will receive a favourable response from industrial interests on further consultation and from Parliament, the Department of Trade should consider exercising the similar power already available under the Consumer Safety Act 1978.

A new concept of "sound and modern practice"

44. Department of Trade consider that their current review of the Consumer Safety Act 1978 offers more than just an opportunity to improve the existing mechanisms of the Act, such as the working of the prohibition powers. It might also be possible to introduce a new concept similar to the German one of "generally recognised rules of technology". Such a concept might be expressed as: "sound and modern practice" or "good practice".

45. The new concept could perhaps be introduced in two ways. First, where safety regulations made under the Act referred to standards on a "deemed to satisfy basis", manufacturers etc marketing non-complying goods might be required to show as part of their defence that they had achieved an equivalent level of safety using "sound and modern practice". Second, the Act merely allows the Secretary of State to make regulations for the purpose of securing that goods are safe; it imposes no duty on manufacturers to market only "safe" goods. It might therefore be possible to amend the Act so as to impose a duty on manufacturers to market only goods which were "safe in accordance with sound and modern practice". The corollary would be that standards referred to under the Act would then be presumed to embody "sound and modern practice". This would effectively reproduce the situation under the German Equipment Safety Law.

ACTION 11. Department of Trade, with interested departments, to consider urgently whether they might bring forward proposals for introducing a legal concept along the lines of "sound and modern practice" as part of their current review of the Consumer Safety Act 1978. Other departments with regulatory powers should consider whether these might be similarly amended as opportunity offers.

(iii) New imitative primary legislation?

46. MISC 14 expressed a preference for concentrating initially on steps within existing legislation to effect the desired move towards a 'German' standards system. The group believes that the programme of action outlined in the preceding sections would represent a significant move towards the situation under the German Equipment Safety Law.

47. Most of the changes necessary to produce the coherent approach and powers under the Equipment Safety Law can be made under existing legislation. However, the changes which are in prospect, ie to the Consumer Safety Act and the Building Regulations, offer the possibility of a much closer approximation. For example, introduction of a legal concept akin to that of the 'generally recognised rules of technology' which underlies the German system, should be possible. And the 'approved document' proposals offer a less cumbersome method of recognising standards.

48. Precisely how close we can come to the German approach must, however, depend on the outcome of the further studies we have suggested but in the light of the above, it is the group's assessment that at this stage there would be little, if anything to be gained from new primary legislation along the lines of the Equipment Safety Law. There might, however, be a case for legislation at a later date to fill in any gaps in powers to carry out the new policy which may have become apparent.

B. Unified arrangements for assessing and accrediting certification bodies; and the introduction of a national mark

49. The group is agreed that it would be of advantage to exporting industries if more certification schemes were available in this country and these schemes were recognised officially. This would provide a better basis for negotiating readier acceptance of our products as meeting overseas market requirements. This could justify pump-priming assistance.

50. There are a number of existing and proposed certification schemes in this country. Powers already exist whereby departments give individual recognition to certification bodies and, in such cases, such recognition helps the acceptability of products in overseas markets.

51. Last year the Department of Trade consulted very widely on common criteria (eg that appropriately qualified staff should be employed; that certification should be on the basis of relevant and testable criteria) to be met by certification bodies seeking recognition by Government departments. Response has generally been favourable. The consultation document did not propose a central framework within which recognition might be granted because it had been agreed that, in the first place, such recognition should be left to the discretion of individual departments. However, the group feels that urgent consideration should be given both to more central arrangements for assessing certification bodies and a related mark. The Department of Industry has already made preliminary proposals for a voluntary scheme to be operated by the National Physical Laboratory (NPL).

52. The foregoing could encompass the establishment of arrangements similar to those relating to the German GS-mark (GS stands for "geprüfte Sicherheit" which means "safety-tested"). The GS mark, introduced via the Equipment Safety Law in 1977, is as the CPRS pointed out, a single national safety mark. To qualify for the GS mark, products must be tested and approved by a government-appointed/accredited body, which is identified in the safety logo. Whilst GS-marking is mandatory for certain articles, where safety is crucial, manufacturers may and do apply to have their products tested voluntarily, partly because of the promotional advantages they gain. More importantly, however, safety enforcement authorities are legally required under the Equipment Safety Law to accept that products bearing the GS mark comply with the "technical safety rules" and to dispense with any further requirements as to proof of initial safety.

53. Some members of the group have doubts about confining the mark to safety or even emphasising a relation between the two but in any event the first step would have to be the one we have endorsed, namely the development of proposals for more unified arrangements for recognising certification bodies.

ACTION 12. Department of Industry, in consultation with other interested departments, to develop its proposals for more unified arrangements for recognising certification bodies and to cost them. This should involve consideration of an associated mark.

V. GREATER USE OF STANDARDS THROUGH IMPROVED INPUT

54. The title of this section of our report reflects the second of the two areas to which BSI attached importance in its proposal for an agreement with Government. It has long been recognised that large scale purchasing interests (eg central and local government, the nationalised industries and public corporations) can help promote industrial efficiency by relating their requirements to standards. There is much scope, it is argued, to reduce the existing multiplicity of different procurement specifications in our public sector market and thus help build a strong domestic base of long production runs, low unit costs and consistent product quality from which to export competitively. The group accepts these industrial and trade policy arguments for the use of standards in public purchasing and believes they should be given due weight in the presentation of any new standards policy. BSI's interest is clearly in the support that public purchasers could give to standards by using them but the extent to which public purchasers and indeed manufacturers and other users are prepared to use those standards will depend upon the extent to which those standards meet their needs. This in turn depends critically upon the quality of input by those who draw up the standards in the first place. We are concerned here then with how to improve this input.

55. We deal only with the external inputs to standards-making, since we consider that the BSI machinery itself has improved considerably over the last 10 years. This has no doubt been due to the more disciplined approach adopted by BSI's management and the management control systems which have been introduced. Thus, BSI now exercises a much tighter grip over the time taken to produce and publish a standard and is developing better procedures for allocating resources to particular areas of standards-making etc.

Public Purchasers

56. Many public sector purchasers already devote considerable resources to writing standards and specifications, much of this work being carried out in-house. The debate is not about whether this work should take place but where its centre of gravity should be; parochially within an industry or within the national standards-making system. Whilst public purchasers will argue variously that their statutory obligations require them to establish their own special arrangements, that their requirements are special and so on, the group believes that the bulk of their standards requirements can be met within the national standards-making process. By reducing their own in-house standards-making activities public purchasers can not only help to strengthen the national forum for standards-making (ie BSI) and ensure that their activities contribute to a stronger body of national standards but can obtain substantial resource savings themselves.

57. Following earlier recommendations in the Warner and other reports Government Departments have taken two initiatives to break through the established attitudes of public purchasers. First, the Ministry of Defence is not only placing greater reliance on and contributing to the formulation of, British standards it is also supporting NATLAS and consequently planning to abandon its

own laboratory accreditation scheme and is also moving from product inspection to supplier assessment, in both cases relying heavily upon British standards. Besides the other benefits, MOD finds it cheaper. Second, the Department of the Environment has announced its intention of requiring Kitemarked or other independently certified products (where these are available) to be specified in contracts for items to be used in buildings constructed for or managed by the Property Services Agency. Consequently, BSI and PSA are working together to identify existing Kitemarked Schemes and other independent certification schemes based on British standards, which meet PSA's needs, as well as areas where standards and schemes either need to be modified (eg with the addition of an extra grade) or new ones developed. The first group of schemes will be made mandatory for PSA work from April 1982. Again, underlying these actions is the recognition of the cost savings to be made. It is intended that a Minister from the Department of the Environment should write to all major public purchasing authorities responsible for construction programmes, including the Local Authority Associations and other Government departments, bringing their attention to the action taken by PSA and BSI and seeking to persuade them to follow a similar course.

ACTION 13. Department of Industry to coordinate an approach by sponsor departments (other than MOD and DOE/PSA) to their large public purchaser "clients" aimed at bringing home to them that participation in the national standards-making process and use of national standards can bring benefit in the form of

i. cost savings (cf the experiences of PSA and MOD);

ii. improving and lending weight to the corpus of recognised standards, which in turn may bring

iii. industrial and trading advantages.

Government

58. We have discussed the contribution the Government can make to the status and use of standards via the proposed Agreement with BSI and through its purchasing practices. In addition, Government departments must also put their house in order as regards their representation on BSI Technical Committees. Hitherto, the problem of getting Government representatives on BSI committees to present a "Government view", as opposed to a narrow technical input, has proved intractable. However, Department of Trade has recently issued new "guidelines" for Government representatives. It has also been agreed with BSI that they will insist that each Government representative signifies that the standard under discussion will be acceptable to Government and that it is his responsibility to see that all necessary consultations within Government are carried out.

59. The contribution which will be expected from Government representatives in the future may include the following. First,

ensuring the a Committee's approach to a standard is appropriate eg that the standard will represent "good practice", that where necessary specifications will be in terms of performance, that graded standards are evolved where appropriate. Second, technical input based on the work of Government establishments (possibly by way of offering a first draft). Third, ensuring that standards do not take refuge in ambiguous drafting but reflect a consensus which has been hammered out amongst committee members though this is not to say that standards should not reflect agreed flexibility where technology is changing. Fourth, monitoring the composition of the committee.

Industry

60. BSI recognises that non-Government representation may be unsatisfactory (for example, technical representatives may lack commercial expertise) but hopes that this will respond to Government example and to a recognition that standards will carry greater commercial significance in the future. This premise underlines much of the action we recommend in this report of course but we think that BSI is being too passive. Positive action is needed from them too to persuade industrial interests, particularly users, that they should be appropriately represented in the standards-making process and that having participated in this they should not only use the standards concerned themselves but should be willing to see them used for regulatory purposes, where appropriate. Also, the numerical balance between manufacturers, users, employees, professional interests (including certification bodies), nationalised industries and government interests may not always be ideal. BSI contend that numerical balance should be immaterial and that they ensure a "fair balance of all interests". They also feel that any bias in a standard caused by an imbalance in committee representation can be corrected as the stage when a draft is put out for public comment. The group believes, however, that there is no substitute for an "acceptable" balance of interests at the outset if the final standard is to be widely acceptable.

ACTION 14. Department of Trade and other interested departments to continue to work closely with BSI on improving the composition of BSI Technical Committees.(5) It should be the aim to persuade industrial interests (particularly users) that their representation in the standards-making process should reflect an intention to use the standards concerned wherever appropriate and a recognition that the standards may subsequently be used for regulatory purposes.

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(5) The question of the composition of BSI Technical Committees is covered by a standard known as BSO Part 3.

VI. OTHER ACTION IN SUPPORT OF STANDARDS

61. We have pointed out that whilst the Equipment Safety Law is important in the German system, it is not the only mechanism underpinning standards. Two others are:

i. the system of product liability; and

ii. the system of industrial insurance.

Product Liability

62. In Germany, liability for damage caused by defective products lies, we understand, not only with the manufacturer who performed the last process on it but everyone who contributed to the manufacturing process is made responsible for his own contribution By ensuring that the components he supplies conform with relevant standards, a manufacturer is seen to avail himself of such specialist technical knowledge as exists in the field and thereby gains a prima facie defence against any subsequent accusation of negligence. Failure to comply with relevant standards may well be taken by the courts as failure to exercise "ordinary care". A similar constraint to use "standard" parts influences the activities of repairers. This system of liability promotes its own policing mechanism and does not rely on intervention from the centre. It is clearly central to the German respect for standards. However, there is a directive under consideration in Brussels under which a producer would be strictly liable for damage caused by a defective product. The question of negligence would not arise and hence the relevance of compliance with standards as a defence in this context would disappear. The directive is unlikely to come into force within less than 5 years but we suspect that any shift towards the German position in the meantime would be impracticable, since changes to the laws of tort and contract would be necessary. Nevertheless, we think it worthwhile examining whether this is in fact the case.

ACTION 15. Department of Trade to look at the role of standards in the German system of product liability and, taking account of current work on product liability in Brussels, to advise on the scope, if any, for emulating the German practice in the UK.

Insurance and other legal aspects

63. The Germans operate a mutual safety insurance system, under which responsibility for insuring technical equipment falls to employers' cooperatives (so-called Berufsgenossenschaften - BGs) and not external insurance bodies as in the UK. As the main contributors to the insurance fund the bigger companies have a strong incentive to see that their smaller brethren comply with the so-called "technical safety rules" - presumed to be embodied in

standards and safety at work and accident prevention regulations - in order to minimise damages costs. Smaller firms are unable to insure machinery which does not comply, unless it is certified as achieving an equivalent safety level by other means by a "competent person", who will usually be an employee of one of the larger firms. The effect on compliance with standards etc is clear.

64. By contrast, the UK insurance market is highly competitive and (save for certain goods covered by specific legal provision to the contrary) firms will rarely refuse to effect an insurance on industrial plant or premises on grounds of defect. Nor has the market proved willing to vary its premiums according to whether goods are certified to standards. They claim that this reflects actuarial experience; and, indeed, it is the case that inherently unsafe plant is not a major cause of industrial accidents. Be that as it may, users are in general able to get their goods insured and thereby to meet the requirements of the Employers' Liability (Compulsory Insurance) Act.

65. A change in the practice of insurers in this respect could be - as it is in Germany - an element of great importance in a consolidated policy of standards and certification. It does indeed already exist in some measure, as for example with industrial boilers and lifting apparatus, where insurability depends upon legally enforced periodic inspection by "competent persons" - usually engineers who are agents of insurance companies. In the case, too, of sprinklers the insurance market acted collectively on official impulse to ensure their use in new construction, so as to minimise fire risks. These are, however, all instances of apparatus with considerable safety connotations and substantial risk of loss. Experience of discussion with the insurance market to date suggests that an extension of the area of non-insurability would require a determined and high level approach in conjunction with other measures to extend the coverage of standards and certification.

66. Any system which elevates the legal status of standards or attaches penalties for non-compliance must provide a readily available system of exemption which will at the same time certify to the soundness of the product. The German version of our "competent persons" is an agent - frequently an official of bigger firms or manufacturing associations - whose certificate of soundness is accepted for insurance purposes. In our system, in the comparatively rare cases where there are legal requirements to conform with particular standards or practices, HSE's chief inspectors are able to give exemptions. As distinct from the German "competent persons", the British version is concerned not with initial integrity of equipment but only with its continuing fitness for use. If and as compliance with standards, whether for legal or insurance reasons, becomes more widespread with us, it seems likely that an extension of the device of the "competent persons" for purposes of certification would be necessary; and we note that Department of Environment's proposals for changing the Building Control System suggest that builders should also be able to seek approval for their buildings from "competent persons" (eg architects) as opposed to Building Control Officers as at present.

ACTION 16. The Department of Trade and other interested Departments should consider the conditions for a renewed approach to the insurance market with a view to an increased linkage of insurability and certification, in the context of the new policy.

The Health and Safety Commission should be invited to examine, as the policy develops, the scope for extending the areas of activity of "competent persons" by means of eg recommendations in approved codes of practice - account to be taken of the reception accorded to Department of the Environment's proposals for competent persons in Cmnd 8179.

Port Controls(6)

67. It is sometimes argued by UK exporters that customs officials in other countries are able to prevent or delay the entry of goods which ostensibly do not comply with technical requirements; and that in order to protect the home market or to secure negotiating leverage UK customs officials should have the same powers. Similarly, some local trading standards authorities have argued that they need powers to prevent the entry of "unsafe" goods and to prevent them from being put into circulation.

- The Position Overseas

68. In the time available, we have been able to investigate only briefly the extent to which other countries either check goods physically for compliance with technical requirements or require documentation supporting claims of compliance. It is our clear impression that the incidence of physical testing of goods for compliance is very low. Japan, for example, insists on testing high pressure gas cylinders. In general, physical examination of goods as undertaken by customs officials is aimed at establishing duty payable, that goods are what they are declared to be in the customs documentation etc. Thus, in Germany, responsibility for enforcing safety standards rests with the competent authority and any action takes place after the customs examination. However, if during their examination, the customs discover any clear infringements of standards or technical regulations they can and do inform the appropriate authority.

69. What certainly does happen is that for certain goods foreign customs require documentary evidence of compliance with technical requirements along with the normal customs entry documentation. Thus, in Japan standards certification is required at the port of entry in respect of five commodities, namely pharmaceuticals,

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(6) "Port controls" is a shorthand term for Customs inspection procedures. In the UK these may take place at the point of entry of goods (which may be a seaport or airport or the Irish land boundary) or at an inland Customs clearance depot in the case of eg some containerised traffic.

high pressure gas, chemical substances plants and animals and foodstuffs. French customs officials also require certificates of compliance with standards in certain cases eg refrigerators. In France also a hitherto unused law from the 1920s was recently activated to require that a declaration of compliance with French safety requirements (which does not have to be supported by evidence) be affixed to imports. In Germany, the Equipment Safety Law does not prevent importation of "unsafe" imports, merely putting them into circulation or displaying them.

70. It is our view and one shared by BSI's Technical Help to Exporters (THE) and supported by the recent Department of Trade and NEDO inquiries that delays to exports which involve technical requirements are generally a result of the UK exporter's failure to supply the requisite documentation for customs clearance purposes either because the goods do not comply with published technical requirements and so cannot be certified or because, even though his goods do comply, the exporter has failed to have them certified.

- The UK Position

71. In the UK the general legal framework is that a "parent" Act either directly or via subordinate legislation lays down a prohibition or restriction on imports, subject to a great variety of conditions depending upon the case - and the Customs Management Act 1979 (CMA) then provides 1) that an offending article is liable to forfeiture; and 2) that an offence is committed if any person deliberately attempts to evade any prohibition or restriction. There is no explicit cross reference between the two Acts. Once the prohibition has been laid down by the parent Act, it is generally the responsibility of Customs and Excise to enforce this, unless the parent Act explicitly states otherwise. It follows that Customs have no responsibility or locus in the absence of a prohibition or restriction. Thus, there are import prohibitions in the Trade Descriptions Act 1968 and Customs are active in enforcing these. It is possible under the HSW Act to establish prohibitions by regulation (as it is intended to do for new substances not properly notified); and the HSC also operates a very tight regime in respect of explosives.

72. The number of 'parent' Acts is very large and the terms of the prohibitions vary widely. Those on the import of flick knives and pornography, for example, are absolute. More common is a situation where imports are prohibited unless certain conditions are fulfilled. The conditions may simply be that there should be an import licence; or other documents may be required. For example, the Plant Health Act 1967 is generally enforced through a system of phytosanitary certificates issued by foreign governments; the Endangered Species Act establishes a system of licensing; the Animal Health Act 1981 import licences, usually backed up by veterinary certificates or a ban on landing animals in the case of rabies. Human food matters are dealt with by the Food and Drugs Act 1955. The Department of Trade's interests are covered by the Import Export Customs Powers (Defence) Act 1939 and under it the Import of Goods (Control) Order 1954.

73. As we have mentioned responsibility for enforcement usually rests with Customs, though specific parent Acts may limit their responsibility or place the responsibility elsewhere. For example, administration of the Imported Food Regulations under the Food and Drugs Act 1955 is the joint responsibility of DHSS and MAFF and enforcement responsibility is assigned to the Port Health Authority or, for goods cleared at inland points, the local health authority (the Act does not impose import prohibitions enforceable by Customs). In this case Customs would provide access to the relevant documents for the inspectors or trading standards officers on whatever regular or irregular basis these officers requested. They would, for example, usually ask to see the documentation of particular cargoes; and Customs would, if asked, make sure the goods were not cleared before physical inspection if this were necessary. In this case, any proceedings would not normally be under the CMA but under the parent Act by the inspectors, although, except in the case of the Imported Food Regulations, which specifically authorise detention by Customs at the request of health officials, it is the CMA coupled with the prohibition in the parent Act which provides Customs with their necessary powers to delay goods for inspection etc.

74. The primary task of Customs is to exercise their legal responsibilities for the collection of charges, such as duty, customs tariff, VAT and CAP levies and for the compilation of statistics relating to imports. Most of these tasks are further defined under EC regulations and directives. Customs cannot therefore physically check all imported goods. In general, they will do so only in respect of a proportion of goods arriving. The main control is through the Customs 'Entry' which accompanies every consignment. Where a computerised system is in operation, the Customs Entry is processed by means of the Customs computer before any goods are released and the officer is automatically presented by the computer with a code indicating what checks and other documents are needed: otherwise a similar procedure is carried out manually. For some tariff headings, goods from certain sources will always require extra documents: control documents (such as import licences) have to be returned to the parent department. In other cases, the computer might advise that physical inspection should be made on a percentage basis. Sometimes other requirements will have to be met: eg for some types of wood the computer will prompt the Customs officer to check that all the bark has been removed. If it has not, the consignment will be referred to the Forestry Commission inspectors.

75. Although it will generally be the Customs officer who makes the initial inspection, he can call on experts or consultants provided by the department whose parent legislation is being implemented. For example, Forestry Commission experts may be able to inspect all cargoes of certain species of trees; or sometimes he may be able to refer samples to the Government Chemist for checking.

76. Clearly, the UK does carry out a very wide range of port controls and has the necessary well-tried machinery, if Ministers were to decide to extend controls to eg checking compliance of equipment with technical requirements. Central to the issue

would be the existence of a prohibition under the relevant parent Act. Some Acts, however, merely prohibit use rather than manufacture, supply etc. This is the case with the Wireless Telegraphy Act, hence the recent problems with the importation of 'illegal' CB radios. It is possible to make prohibitions under both the Consumer Safety Act and the HSW Act. The former has been exercised in this way but the HSW Act has not. Moreover, both Acts contain powers to influence the extent to which Customs or any other body should be responsible for enforcement of any prohibition. Thus, HSE might retain its enforcement role in respect of articles for use at work.

77. We have pointed out that greater emphasis on checking initial integrity would almost certainly impose additional manpower costs. (Physical testing of goods could of course require qualified manpower). This would be true for Customs, HSE and local authorities (the last are split on this issue). Moreover, there are practical considerations to be taken into account. For example, Dover just does not have the space for containerised traffic to be "unstuffed" on the spot.

78. Port controls are not without EC implications. It is almost certain that only where UK regulations required that certain goods comply with standards etc before they could be marketed (whether or not certification was also required) and the requirement was accepted within the Community, would the introduction of port controls either in respect of certificates or by physical examination be possible. Even then, excessive reliance on physical examination might be interpreted as action in restraint of trade.

79. In the light of the above, the group considers that careful consideration of all the implications of port controls is necessary before it is decided to proceed with them.

ACTION 17. Department of Trade in conjunction with Customs and Excise and the Foreign and Commonwealth Office to survey the extent to which other countries carry out port controls to check compliance with technical requirements.

Taking into account the results of the above survey, Department of Trade in conjunction with other interested departments, but especially Customs and Excise and (if the HSC agrees) HSE, to examine the case for controlling imports at the ports for compliance with technical requirements. The study to cover also likely manpower costs and Community implications.

Departments considering new legislation or amendments to existing legislation which may impose technical requirements, to ensure that provision is made for the prohibition of imports under appropriate conditions; and for the delegation of enforcement responsibility.

VII. IMPROVING GOVERNMENT'S INTERNAL COORDINATING MACHINERY

80. Present internal arrangements for keeping departments informed and collecting their views about standards-related issues are working well. We are, however, weak in one very important area: the machinery for coordinating departmental policies on standards issues, whether domestic or international.

81. Coordination is presently effected through the Interdepartmental Committee for Quality Assurance and Standards (IQS), which is chaired by a Department of Trade Assistant Secretary. IQS is a large and hence unwieldy committee. Also, it has tended to attract departmental representatives who lack the authority to speak for their departments as a whole, as well as (often) relevant expertise. Consequently IQS itself has lacked authority interdepartmentally.

82. IQS's structure has compounded these difficulties. The same people sit on the main committee and subordinate groups, so that accountability has been weakened. Moreover, important policy issues tend to become submerged in a welter of issues of detail.

83. We note also that whilst there is provision in IQS's constitution for taking the views of eg industry, BSI, there is no provision for them to be represented in the committee's discussions directly. Similarly, it would be desirable to involve in the coordinating machinery Department of Industry's Metrology and Standards Requirements Board (MSRB), which is responsible for the allocation of DOI funds for research and development on standards in the quality and metrology areas.

84. In the light of the above, the group considers that IQS should be replaced by a Cabinet Official Committee on Quality Assurance and Standards, which should report to the appropriate Ministerial Committee (possibly E(EA) Committee). The new official committee should be chaired by a Department of Trade Deputy Secretary. There should be a suitable structure of sub-groups and there might be a lower level consultative committee involving outside interests (eg BSI, industry).

ACTION 18. There should be a new interdepartmental committee on quality assurance and standards under Cabinet Office auspices.

VIII. PRESENTING THE NEW INITIATIVE ON STANDARDS

85. The proposed changes in UK standards policy which MISC 14 endorsed will need very careful presentation (and implementation) if they are to be received favourably. At home greater commitment as such and action to erect more of a 'halo' around standards will be needed. Overseas we shall need to allay suspicions among our trading partners about a new protectionism in the UK.

86. The CPRS report identified three main advantages that might accrue from the proposed initiative:

i. a general improvement of quality and safety and hence marketability - of UK manufactured goods;

ii. easier access to other EC markets, where certification to standards is almost de rigueur;

iii. more enforcement of defined technical and safety requirements in the home market.

These advantages, especially (i) and (ii), should form the centrepiece of the Government's presentational effort.

87. This presentational effort will have to be considerable, if industry is to be persuaded that the potential advantages identified above will not be outweighed by the possible drawbacks of what may seem a more prescriptive attitude towards the market. Manufacturers may - not without some justification - question the suitability of the present corpus of standards for the new strategy and the time and resources needed to bring it up to scratch. They may also be concerned at the possible impact on innovation of the new policy and on exports, if it seemed that status might be given to exclusively British standards rather than those followed in world markets.

88. Users, importers and our trading partners will suspect protectionist motives behind the initiative. We shall inevitably have to meet the criticism that we are erecting non-tariff barriers, not least from other EC Member States. Article 36 of the Treaty of Rome allows derogations in the name of inter alia public policy and protection of health and life of humans, animals and plants, for actions which might otherwise be held to be "in restraint of trade" under Article 30. But, the more radical the changes in legal and administrative practice and the greater the impact on imports, the greater will be risk of challenge from within the Community. Similar considerations arise in respect of the GATT Technical Barriers to Trade Agreement (the so-called Standards Agreement).

89. The proposed new policy would need handling delicately. There are many interests to consider and carry, if such a significant change in direction is to succeed. We think the way to set the ball rolling is with a Ministerial key-note speech, giving the broad outline of the proposed new more coherent and comprehensive policy on standards. This should then be followed up with wider Ministerial and official participation in suitable standards fora and activities. This in turn should

be followed up, possibly towards the autumn of this year, with a consultative document setting out the initiative in greater detail.

ACTION 19. Department of Trade with other interested departments to draft a key-note speech covering in broad outline the proposed new policy on standards; to propose a programme of wider Ministerial and official activities in support of the initiative; and to set in hand the preparation of a consultative document.

LTS Translation 348/75
Original: German

AGREEMENT
between the Federal Republic of Germany, represented by the Federal Minister for Industry, and the German Standards Institution (Deutscher Normenausschuss e.V.) represented by its President.

Article 1

(1) The Federal Government recognises the Deutscher Normenausschuss e.V. (DNA) in accordance with the provisions of DIN 820, Part 1, Section 3, published in February 1974 (Appendix 1) as the competent Standards Organization for the Federal Territory and (West) Berlin, and also as the national Standards body in non-governmental international Standards Organizations.

(2) The DNA undertakes to consider the public interest in all its work in the preparation of Standards. When drafting DIN Standards it will ensure in particular that the Standards can be quoted in legislative measures, in matters affecting public administration and in legal actions, as documents which endorse technical requirements.

(3) The Federal Government proposes in future to support work in the field of Standards within the available resources of the Federal budget. In this connection the benefit accruing to the Federal Government, either directly or indirectly, as a result of DNA's work, must also be taken into account.

Article 2

(1) The DNA shall allow the Federal Government, on the basis of the latter's technical responsibilities, and on its request, a seat on the Management Boards of the Technical Standards Committees.

(2) The DNA undertakes to invite the relevant official bodies to take part in the work of preparing Standards.

Article 3

The DNA guarantees that the provisions of DIN 820, together with the directives laid down for Technical Standards Committees, will be observed by its various bodies, and that decisions made by the governing body of the DNA shall be binding on them. In the event of any amendments to DIN 820, the DNA shall ensure that the obligations which it has accepted under this Agreement are not thereby prejudiced.

Article 4

(1) The DNA undertakes to give preferential treatment to requests from the Federal Government to carry out work on Standards projects which the Federal Government considers to be in the public interest. The latter can set a time limit, in agreement with the DNA, for the completion of a project in accordance with the first sentence. The DNA shall ensure that this time limit is maintained by its appropriate Working Groups.

(2) During this period the Federal Government shall not itself make corresponding regulations, nor allow them to be made by third parties, unless they are to be the subject of legislative action or concern the enforcement of laws or are otherwise required in the public interest.

(3) If a DIN Standard is not completed within the time limit fixed, the DNA shall submit a report. The Federal Government shall decide whether to agree to an extension of the time limit or to prepare its own regulations.

(4) In the event of a regulation being issued by the Federal Government, the DNA undertakes to amend, withdraw or withhold publication of any Standard which may be contrary to such regulation.

Article 5

(1) The DNA shall inform the appropriate Federal Government Departments of the existence of a Standard - insofar as the public interest is affected - and shall hold itself available to provide advice and expert opinion in the field of standardization, if so requested.

(2) The Federal Government shall inform the DNA of the main events and developments in regard to Standards, the associated activity on technical regulations and the technical directives issued by the European Communities, insofar as they concern DNA's interests and unless there are important reasons for not doing so.

(3) The Federal Government shall inform DNA of the main events and developments in connection with any intergovernmental Agreements and any task being undertaken by official intergovernmental bodies concerned with Standards and the associated technical regulations, or shall invite DNA to participate therein, insofar as this is necessary for the execution of its tasks by the DNA, and unless there are important reasons for not doing so.

(4) The Federal Government can invite DNA experts to become members of its Advisory Committees, insofar as the activities of the DNA are affected.

Article 6

(1) The DNA shall endeavour to contribute to international understanding in the field of standardization. It shall do everything in its power to ensure that commitments entered into by the Federal Government under intergovernmental agreements for the purpose of promoting freer trade and removing technical barriers to trade are not prejudiced by DIN Standards.

(2) The DNA shall assist the Federal Government to fulfil its obligations under intergovernmental agreements in the field of Standards and the associated technical regulations.

Article 7

The DNA shall make its Technical Information System (Informationssystem Technik - DINST) available as a central generally accessible Information and Documentation Centre to provide information, against repayment, on German Standards including technical regulations dealing with safety requirements, as well as on other types of technical regulations, including regulations issued by Standards Organizations in other countries, and any other relevant documentation.

Article 8

The Federal Government shall, without prejudice to its international obligations, apply DIN Standards in its administrative departments, when issuing invitations to tender or placing orders, and shall use its influence to ensure that other public authorities placing contracts shall take similar action. It reserves the right, however, to issue any instructions which may be necessary in order to amplify or to qualify the DIN Standards covering its own sphere.

Article 9

The Federal Government shall ensure that a list of recently published DIN Standards and DIN Draft Standards, together with a reference to any proposed standards projects or changes in German Standards appears in the Federal Official Gazette (Bundesanzeiger).

Article 10

(1) This Agreement shall cover subject areas for which the Federal Government is responsible under constitutional law. Without prejudice to the validity of this Agreement separate arrangements or agreements covering individual technical fields may be concluded direct between the appropriate official Departments and DNA, with the concurrence of the competent Technical Standards Committee.

(2) For definitions of the concepts:

National Standards Organization
International Standards Organization
DIN Standards
Standardization work

reference should be made to DIN 820, Part 1, Issued February 1974 (Appendix 1) and DIN 820, Part 3, Issued March 1975 (Appendix 2), as detailed below:

National Standards Organization	DIN 820, Part 3, Issued March 1975, Appendix A, Page 11, No A. 11
International Standards Organization	DIN 820, Part 3, Issued March 1975 Appendix A, Page 11, No A. 12
DIN Standards	DIN 820, Part 1, Issued February 1974, Section 4.1
Standardization work	DIN 820, Part 3, Issued March 1975, No 5

(3) For the interpretation of this Agreement the Explanatory Notes attached as Appendix 3 are applicable.

Article 11

This Agreement is concluded for an unspecified period. Either of the Parties may terminate the Agreement at the end of any one year, providing one year's notice of the intention to terminate has been given.

Appendix 1 DIN 820 Part 1: Date of issue February 1974: "Standardization work - Basic Principles" *

Appendix 2 DIN 820 Part 3: Date of issue March 1975: "Standardization work - Concepts" *

Appendix 3 Explanatory Notes on the Agreement

Bonn, the 1975

The Federal Minister for Industry

The President of the German Standards Institution

* Not attached

EXPLANATORY NOTES

on the Agreement between the Federal Republic of Germany and the Deutscher Normenausschuss e.V.

I General

Standardization in the Federal Republic of Germany is an independent responsibility of trade and industry. As a central standards body, DNA is the appropriate standards organisation for the Federal Territory and (West) Berlin. The results of DNA's work appear in the form of DIN Standards, the complete set of which forms the German Series of Standards. Insofar as this Agreement is concerned with provisions relating to Standards, the latter are to be understood as the Standards published by DNA (DIN Standards).

In view of the fact that technology has already penetrated and is continuing to penetrate many fields of human activity, Standards represent a regulating factor in controlling technology and its further development, particularly in regard to safety, health, the protection of the environment and consumer protection. They are of prime importance both in matters affecting the economy (eg energy saving) and in the elimination of trade barriers which arise because of the existence of varying types of technical regulations. This importance extends to economic transactions throughout the world, but particularly in the European Communities.

For a number of individual areas affecting the public interest the European Communities formulate Directives in accordance with Article 100 of the EEC Treaty for the purposes of harmonizing the legal and administrative measures adopted in Member States. As far as possible, these Directives make provision for a link between legal requirements and technical Standards.

In addition, the United Nations' Economic Commission for Europe (ECE) has drawn up proposals for relating the statutory requirements to technical Standards which have been recommended for adoption by Member States.

International obligations to remove technical barriers to trade are to be entered into by Member States of the General Agreement on Tariffs and Trade (GATT) in the form of a standardization Code, and opportunities will be created for influencing standards organizations, if such opportunities have not already been established by law.

The growing importance of standardization makes it imperative to intensify the previous collaboration between the Federal Government and DNA. In this connection DNA is being required to give increasing assistance to the Federal Government by way of advice and, by drawing up DIN Standards, in particular in the areas referred to in the foregoing, to forumlate generally accepted rules of the art which will enable reference to Standards to be made in all statutory regulations. This possibility of associating statutory regulations with technical Standards relieves the Federal Government of having to draft technical regulations itself for each individual case.

A number of industrialized countries have regulated (by law) the relationship between the State and the Standards Organization (eg Belgium, France, Austria). Other industrialized countries have adopted the solution of a contractual or semi-contractual agreement (eg Denmark, UK, Sweden). Up to now the relationship between the Federal Government and the DNA has not been governed by legal provisions.

In view of the position indicated above it is appropriate that this relationship should be legally clarified. When deciding whether this should be achieved by passing a specific Act or by an Agreement, the Federal Government and DNA preferred the more flexible form of an Agreement. As an Agreement under public law it is intended to operate in areas not subject to law, and to assist coordination.

The main obligation of the Federal Government under this Agreement is the "recognition" of the DNA in the sense of para 1 of Article 1; for its part the DNA undertakes mainly to consider the public interest in all its activities. The standardization work traditionally undertaken by private associations will neither be regarded as Government work by virtue of the individual provisions of this Agreement nor will the collaboration of Federal Government representatives and public authorities, or any other provision of the Agreement, result in such work being given an official character.

Other series of technical regulations (issued by other bodies) are not affected by this Agreement. The technical requirements contained in such documents can, as in the case of DIN Standards, be referred to in statutory regulations, if the criteria applicable to them are fulfilled. The work, together with the results of such work, undertaken by the Technical Committees set up under the Industrial Code, by the Nuclear Engineering Committee, or by comparable committees, will also be unaffected by the Agreement. Nor does this Agreement affect the applicability of the provisions of the Restrictive Trade Practices Act to DIN Standards.

II Points specific to the Agreement

Re Article 1

Under its Articles of Association the DNA represents standardization interests in the Federal Territory and (West) Berlin and also represents the Federal Government with respect to countries outside the Republic. Meanwhile the important technical fields of electrical engineering and gas technology have also been included in DNA's work. It is essential that the Federal Government should take this into account in its relationship with the DNA, since the international and regional activities in the field of standardization, mentioned in these Explanatory Notes under the heading of "General", may lead to certain commitments by national Standards Organizations.

Recognition of the DNA does not include the delegation of official authority. Nor does it affect DNA's membership of international and regional non-governmental Standards Organizations. The Agreement likewise has no effect on the Federal Government's relationship with other organizations in industry and other bodies which issue different series of technical regulations. The DNA does not become the exclusive adviser of the Federal Government under the Agreement, nor is the DNA the only organization to receive support, since public funds are used both for the promotion of standardization systems and for the preparation of other series of technical regulations. Sub-paragraph 2 is intended to express the principle that the public interest is to be taken into account when initiating Standards projects, particularly in the fields of safety, health, protection of the environment and consumer protection, as well as in those fields in which there is a particular overall economic (eg energy saving) or labour-economic interest, or which are of special internal interest to administrative departments, or for contract and procurement procedures (electronic data processing, information and documentation systems, engineering).

A this involves reference - within the existing legal restrictions - to Standards as described in the Agreement (eg a strict reference or a general 'renvoi aux normes').

Sub-paragraph 3 represents a statement of intent by the Federal Government to promote standardization work in future out of the Federal budget. The Federal Government will benefit directly by being able to use Standards when formulating legislative or administrative measures. In the field of public contracts the use of Standards will have a considerable rationalizing effect. The direct benefits will lie in the extent to which standardization contributes to the pursuit of its own objectives, and particularly those concerned with economic policy.

Re Article 2

The provision in sub-paragraph 1 corresponds to the present position. It should however result in increased participation by public authorities in standardization work, insofar as a particular interest is involved. The appropriate Committees will deal with requests from public (Government) authorities on the basis of the principles contained in DIN 820.

Sub-paragraph 2 is also intended to ensure direct participation by public authorities in the execution of work on Standards. Reference should be made to DIN 820, Part 1, Section 3.4 according to which Federal Government representatives no longer become members in their own name of DNA's Working and Management Committees (ie in a personal capacity), but must be authorized and given powers of decision by the bodies who appoint them, thus becoming representatives of the delegating bodies.

The Federal Government will be kept informed by publication in DIN Mitteilungen and by invitation to representatives of public authorities to attend the meetings concerned.

Re Article 3

The bodies within the DNA are bound by a decision of the Governing Body to comply with the provisions of DIN 820 as stated in a currently valid text. This obligation which is internal to the Institution is to be supplemented by a corresponding obligation by the DNA to the Federal Government. The DNA bodies bound by the provision in Article 3 are, under DNA's Articles of Association, the following: the General Assembly, the Governing Body, the President, the Secretary and the Secretariat, the Technical Standards Committees and the Working Groups, and the Examining Committee.

Re Article 4

This provision lays down a specific procedure for cases in which the Federal Government wishes a Standard to be prepared. It does not, however, oblige the Federal Government to propose in each case the drafting of a Standard. If the Federal Government intends to use a DIN Standard, the DNA must, whenever a public interest is involved, keep to the time limits agreed by the Parties to the Agreement. In addition, the DNA must not publish any Standard the content of which is contrary to a technical regulation issued by the Federal Government under Article 4. No restriction on the Federal Government's legal powers of initiative is to be inferred from this provision. The same applies to cases in which the Federal Government issues Decrees. If, during the time limit a matter of public interest in the sector concerned arises, the Federal Government is free to issue its own regulations, particularly in cases where for this very reason it cannot wait for the expiry of the time limit.

Re Article 5

The obligation in sub-para 1 to keep the Federal Government informed is of a general nature. It supplements DNA's obligation in sub-para 2 of Article 2, to invite the Federal Government to participate in standardization work and to inform it in due course of the inclusion of such work in the DIN series of Standards. (See also background comment on Article 6).

The provisions in sub-paras 2 and 3 are also of a general nature.

The provisions in sub-paras 1 to 3 correspond to practices adopted so far, eg by the European Communities, the Economic Commission for Europe (ECE) and GATT.

In addition, the provisions of sub-para 4 reproduce the present position, eg participation by DNA experts in the work of the Committees referred to in Article 24 of the Industrial Code.

Re Article 6

Sub-para 1 is meant to take account of the obligations in regard to standardization which arise for example out of the EEC Treaty and the future GATT standardization code. The efforts to facilitate the exchange of goods and to promote international understanding represent the objectives laid down in international trade policy and are being taken into account to an ever-increasing extent in the field of standardization.

Sub-para 2 amplifies the provisions in sub-para 2 of Article 2 and sub-para 1 of Article 5 with regard to obligations arising out of intergovernmental agreements. This paragraph too corresponds to previous practice.

Re Article 7

The DNA Information Centre - DINST - has already been set up, and will be further extended in the future. It represents a source of information also for the Federal Government.

Re Article 8

This provision affects the placing of Government contracts. In principle, Government contracts are to be based on DIN Standards. There will be exceptions, however, particularly in the defence field. The reservation in sub-paragraph 1 allows for international obligations in regard to the placing of Government contracts, eg on the European Communities' level.

Re Article 9

Publication in the Federal Official Gazette (Bundesanzeiger) of recently issued DIN Standards and DIN Draft Standards, together with references to proposed Standards projects and amendments to the DIN Series of Standards, helps to disseminate the idea of standardization in administrative Departments as well, and to highlight its importance in economic life. Publishing the source of the Standards does not in any way make DIN Standards "mandatory".

Re Article 10

Sub-paragraph 1, sentence 1 is necessary because of the division of responsibility between the Federal and the State authorities, enshrined in constitutional law. Under sub-paragraph 1, sentence 2, supplementary clauses can be included in the Agreement to cover special cases. They must not, however, alter the basic principles of the Agreement.

Sub-paragraph 2 contains definitions of concepts, covering those on which the Agreement is based. The purpose of sub-paragraph 2 is to make these Explanatory Notes an integral part of the Agreement.

CONFIDENTIAL

Clyde Lw
Tosh
MLS.

TRADE
Prime Minister
B

Ref. A07720

PRIME MINISTER

I will consider further

At last! (Your meeting was on 22 December).
Agree a 6-month delay? MLS 8/3

Departmental Responsibility for Standards etc.

I attach a report prepared by the MPO's Machinery of Government Division in consultation with those mainly concerned. It presents the arguments for and against transferring responsibility for policy on standards from the Secretary of State for Trade to the Secretary of State for Industry, and merging the National Weights and Measures Laboratory with the National Physical Laboratory under the Secretary of State for Industry; and outlines the practical issues that would be involved in making such changes. I am sending copies of the report to the Secretaries of State for Industry and for Trade.

2. The report does not make any recommendations, and there is no agreed course of action either at official level or between the Secretaries of State. You will probably want to discuss the matter again with the Secretaries of State in the light of the evidence available from the report.

3. Changes in the machinery of government, when they consist of transferring a body of work and the staff engaged in it from one Department to another, do not of themselves produce changes of policy. They are at least temporarily unsettling; and, if they involve a change of location, they give rise to some expenditure. Nonetheless they can still be advantageous, if they coincide with a change of policy or a shift in the emphasis of policy: they help to serve to the outside world (and to Whitehall) as a signal of the change, and they may help, by bringing about changes in the attitudes of the staff concerned to the work in question, to make a change of policy more surely effective.

4. Judged against these criteria, my view is that there is on balance a case for transferring the policy responsibility for standards to the Secretary of State for Industry. Ministers collectively have decided upon a shift in policy emphasis, which could with advantage be reflected in organisational change. Placing the policy responsibility with the Secretary of State for Industry would add weight to the emphasis upon using standards to jack up industrial performance;

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and would also mean that the policy responsibility was brought together with the responsibility for operating several of the most potent "levers of influence" which can help to enhance the status and use of standards - e.g. through public purchasing and schemes for laboratory accreditation.

5. Organisational change will not, however, resolve all the problems associated with promoting an active, integrated policy on standards. Indeed, there is a danger that concern about organisational changes could obscure the real issues. We do not want the momentum of work on standards, which has been generated by the CPRS's latest report to MISC 14 and the Working Group set up to consider implementation of its recommendations, to be diverted. It is known that the Secretary of State for Trade would resist - would indeed resent - the transfer of functions proposed. There would inevitably be some disruption and demoralisation of staff who would continue to be involved in the work. The problems associated with any organisational change are accentuated in this case because both Departments - Trade and Industry - are in any case reorganising internally in the area where standards work belongs or would belong if transferred. On one view it would be sensible to make a transfer of responsibilities a part of these wider reorganisations, but on the other hand it might be better to wait until things have settled down.

6. Despite my belief that there is on balance a case for a transfer I would recommend that we should defer a final decision for six months. The Department of Trade have made considerable efforts in the last couple of months to do what they should have done in the previous year, through the Gray Working Group (which is due to report shortly on the implementation of the CPRS recommendations) and otherwise. A good deal of this change in attitude and commitment is, I believe, due to the personal efforts of Michael Franklin, who is making his presence felt to advantage in this, as in a number of other aspects of the Department of Trade's work. To make the change now would seem like a rebuff to his attempts; and I think there would also be practical advantages in seeing whether the Department can sustain the momentum in implementing the CPRS recommendations without having to incur the disruption costs of a transfer of responsibilities.

7. I suggest therefore that you might tell the two Secretaries of State that, although you can see some marginal advantages in a transfer of responsibilities, you are concerned that the inevitable disruption involved in making a change might dissipate the momentum that has now (under Department of Trade leadership) been put behind the work on standards. You would therefore prefer to make a final judgment in six months' time, when you would want to review the progress that has been made and take stock in the light of the organisational changes which are anyway being made in both Departments.

8. The Secretary of State for Industry also proposed a merger of the National Weights and Measures Laboratory and the National Physical Laboratory, under his aegis. The case for this is far less clear-cut, and the question of responsibility for standards does not depend upon it, or vice versa. There probably are some savings to be made in the longer run, but the short-term disruption costs could be high. Moreover, the Department of Trade have a strong (though not insuperable) point in saying that the work of the National Weights and Measures Laboratory in discharging their Secretary of State's statutory responsibilities in the consumer protection field cannot satisfactorily be done on an agency basis by a Laboratory under another Secretary of State's control.

9. I would recommend that, if you agree that the main decision on responsibility for standards should be deferred for six months, a decision on a merger of the Laboratories should likewise be deferred, and the Departments of Industry and Trade Common Services people should be asked to produce some costings of potential savings and short-term costs. In six months' time we might also have a clearer picture of the role that a merged "metrology" Laboratory might play in implementing the Government's policy on standards, and whether a merger would greatly assist in the policy.

RWA

ROBERT ARMSTRONG

5th March, 1982

Poor quality text due to the nature of the material.

Image quality is best available.

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NATIONAL STANDARDS AND INTERNATIONAL TRADE
- DEPARTMENTAL RESPONSIBILITIES

Background Report by the Machinery of Government Division, Management and Personnel Office

BACKGROUND

1. In November 1981 the Ministerial Group on Government Strategy (MISC 14) considered a paper by the CPRS on the organisational arrangements for, and legal status of, standards in the UK; MISC 14 endorsed the CPRS' recommendations for action. There was some inconclusive discussion in the Committee about the division of responsibility for standards policy between the Secretaries of State for Trade and for Industry and the possibility of some transfer of responsibilities to the Secretary of State for Industry. The Prime Minister noted this and raised the issue with the two Secretaries of State concerned, the Chancellor of the Exchequer, Sir Robert Armstrong and Mr Ibbs on 22 December. She asked for a study of the advantages and disadvantages of a transfer of functions to be carried out in consultation with the Departments concerned. Sir Robert Armstrong met the Permanent Secretaries and others concerned on 5 January; MG Division in the MPO were asked to prepare a report, in consultation with, amongst others, the Departments of Trade and Industry, the CPRS and Treasury, before the end of February.

OBJECTIVES OF THE ORGANISATION OF WORK ON STANDARDS

2. The objective of the organisation of work on standards, and hence the rationale of any transfer of responsibilities, should be to support the CPRS recommendations agreed by MISC 14. The organisation of Government work should therefore so far as possible:

- create a strong focus for a positive and co-ordinated approach to the production of standards and establishment of certification schemes;

- establish unified arrangements for assessing and accrediting certification bodies and test houses;

- co-ordinate and promote the use of standards in regulatory functions and in public procurement;

- exploit industrial sponsorship and international trade links so as to enhance the recognition and use of standards adopted by the UK.

- encourage the development of a stronger and more formal link between Government and BSI.

3. One constraint has to be recognised: no re-organisation can completely unify responsibility for all aspects of policy on standards. A dozen Departments have regulatory functions to which standards are relevant; half a dozen have major purchasing functions; a number have sponsorship roles to different industries in both the public and the private sectors. In part this reflects the different purposes that standards serve. The best that can be hoped for is to strengthen

co-ordination, minimise fragmentation and create a clearly recognised focus for the operation of the 'levers of influence'.

The issues examined

4. The discussions with the main interested parties have focussed on four issues:

a. the cases for and against transferring responsibility for sponsorship of the BSI and policy on standards and quality assurance, from the Secretary of State for Trade to the Secretary of State for Industry;

b. alternatively, the scope for improving arrangements for promoting work on standards and quality assurance work, without any transfer of responsibilities;

c. the practical issues which would arise from transferring the responsibilities suggested by the Department of Industry. (This would entail stripping out the sponsorship and policy work from the Division in Department of Trade (Metrology, Quality Assurance, Safety and Standards Division - MQS) which presently deals with it, whilst leaving with Department of Trade the related responsibilities for co-ordination of work on Article 100, the GATT agreement and other international matters relating to the elimination of technical barriers to trade);

d. the question of a merger of the National Weights and Measures Laboratory and the National Physical Laboratory; responsibilities for the work of a merged Laboratory, and the feasibility of separating the organisation dealing with policy on weights and measures from the laboratory performing legal metrology work.

RESPONSIBILITY FOR POLICY ON STANDARDS AND QUALITY ASSURANCE

The case for leaving main responsibility with Department of Trade

5. The arguments advanced by those in favour of leaving responsibility with the Department of Trade are:-

a. possession: policy on standards and sponsorship of BSI are part of an existing working organisation in which there are well established and well recognised links (including international links and others with outside organisations, notably BSI and CSI). A lot of good work has been done in following up the earlier CPRS recommendations in a field where rapid progress cannot be expected. The disruption associated with a transfer of responsibilities could delay progress rather than assist it.

b. MQS Division in the Department of Trade is in any case being reorganised in a way that will dissociate some aspects of standards and quality assurance work from consumer affairs and link them with external trade policy.

c. The Secretary of State for Trade and his Department have some responsibilities in respect of all the main interests which standards in some way serve - manufacturers and their trading interests, consumers and users, promotion of competition - and are

therefore best placed to do a balancing act between the sometimes competing claims. The Department of Industry on the other hand are directly concerned with only one factor in the balance - ie their general sponsorship of industry role - which could result in standards being used against the interests of consumers and in support of a protectionist attitude.

d. a key point in raising standards is consumer pressure. Because of its responsibilities for consumer protection, the Department of Trade is well placed to channel this pressure towards the production of better standards.

e. wherever possible, policy on standards and on regulation needs to be brigaded together if regulatory functions are to make the best use of standards. Department of Trade staff have considerable experience of regulatory work in a number of fields, and at least part of the regulation field - consumer safety and weights and measures legislation - lies with the Department. The advantages of bringing together responsibility for consumer safety and for standards have already been shown eg in the incorporation of standards into regulations. Transferring responsibility for standards policy would break that link,

f. on the other hand, bringing together policy on standards and sponsorship of industry creates an uneasy partnership with presentational drawbacks. A transfer of responsibilities is likely to be seen by international trading interests, consumer organisations and the local authorities responsible for enforcing consumer protection measures as a move to favour manufacturers at the expense of the consumer and free trade.

g. the international aspects of work on standards are crucial; and Department of Trade have well-established and recognised links with the international negotiating machinery both on standards (ISO, CEN, CENELEC, etc) and more generally on harmonisation (Article 100) and removal of technical barriers to Trade (eg the GATT agreement). The reorganisation of work in Department of Trade should if anything strengthen these links. Transferring responsibility for sponsorship of BSI would break a strong link by which BSI's programme of work and priorities are geared to international work on standards, as well as increasing fragmentation on eg GATT and Article 100 work.

h. The Department of Trade's general international links eg through GATT are also important in relation to international accreditation schemes and UK representation in ILAC (the International Laboratory Accreditation Conference).

<u>The case for transferring to Department of Industry the sponsorship of BSI and policy on standards and quality assurance</u>

6. The arguments advanced by those in favour of a transfer of responsibilities are:

a. The Secretary of State for Industry and his Department are firmly committed to using standards as a means of raising the quality of UK manufactured products and increasing competitiveness.

They wish to give greater emphasis to the positive aspect of raising the quality and reliability of British goods rather than concentrating as at present on consumer protection (which fails to take account of markets and costs and has manifestly failed to maintain, let alone raise, the quality of British goods). Far from wanting to use standards for protectionists purposes, they see standards and quality assurance as an aspect of industrial and commercial policy to improve competitiveness. By the same token their approach to standards in relation to technical barriers to trade involves giving more weight to the contribution which the certificated achievement of internationally recognised standards of quality can make, in enabling British industry to surmount non-tarriff barriers based on mandatory standards. In pursuing this shift of emphasis and giving priority to associated work, the Department of Industry are in line with the conclusions of Ministers in MISC 14 and the recommendations of the CPRS Report which Ministers endorsed.

b. quality assurance is at the heart of measures to raise UK industrial performance for which Department of Industry is responsible; it is a matter of chance that quality assurance should have come to rest in Department of Trade. But - all sides agree- policy on standards and quality assurance work hang logically together. If the arguments on responsibility for standards policy are closely balanced, those on responsibility for quality assurance are not, and should tip the total balance in favour of DI assuming responsibility for quality and standards.

c. Department of Industry is well placed to act as the natural focus for co-ordinating work on standards and related functions - ie design and quality assurance, certification and accreditation schemes. It is recognised by other government Departments as the main link-point with industry and as having the main policy role in relation to industry; it is the natural focus for industry to turn to, which is increasingly happening on standards matters. The Department is responsible for the Focus Committee on Standards (which has industrial participation); and has already under its aegis many of the bodies which are critical for the creation of a unified approach to standards, certification and accreditation - eg the NPL, NEL and Research Requirements Boards, NATLAS, the British Calibration Service, the Design Council. All this means that it is potentially well placed to operate the 'levers of influence' if given responsibility for doing so - and giving it that responsibility would demonstrate the government's commitment to doing something to raise standards and the level of industrial efficiency.

d. specifically, Department of Industry has a sponsorship role for a number (though not all) of the key nationalised industries, and for high technology industries such as information technology and robotics where the demand for good internationally-recognised standards is considerable.

e. the Department's sponsorship role, and responsibilities for public purchasing policy, also put it in a strong position to exercise persuasion in the use of procurement to support recognised standards and thus enhance their status.

f. the Department of Industry is already heavily involved in the standards writing process. It has 230 staff, mainly from its Industrial Research Establishments such as NPL and NEL, engaged in 630 BSI committees. In addition through its Research Requirements Boards it is a major source of funds for research to provide a technical basis for standards writing. It thus has a technical capability and direct means to influence the quality of standards produced.

g. a major gap in the existing machinery is a national focus for assessment and certification, and for accreditation of certifying organisations. DI can build upon its responsibilities for bodies such as the British Calibration Service and NATLAS to fill this gap; and if the Department also had responsibility for policy on standards, could ensure proper links throughout the process of setting and applying standards. Moreover DOI, as the Department with practical responsiblity for national laboratory accreditation, is better placed to take responsibility for representing the country internationally at ILAC.

h. although the Department of Industry does not have direct responsibility for many regulatory functions that could be used to enhance the status of standards - with the important exception of the telecommunications field - it has well-developed links with HSE, and responsibilities on the certification side, that could be exploited; and more generally is well placed to provide a framework for regulatory functions. There is no reason why responsibility for policy on standards and for carrying out regulatory functions have to go together (and in practice, because of the diversity of regulatory functions, that is impossible). What is needed is an active approach to the regulatory organisations to co-ordinate their activities with policy on standards, rather then direct responsibility for them.

i. the disruption associated with any transfer of responsibilities could be minimal; Department of Trade are themselves disbanding MQS Division's work and splitting it between other DT Divisions, and the fact that DOI and DT have common citizenship and services would ease a handover. From the point of view of 'outsiders' the change would clarify responsibilities in the standards field and help to narrow the number of foci.

The practical issues involved in dividing MQS Division's work

7. The Metrology, Quality Assurance, Safety and Standards Division is presently divided into 5 Branches. It is part of the Competition and Consumer Affairs Deputy Secretary Command, but the Under Secretary has since last summer worked to the Deputy Secretary and Minister responsible for international trade on standards matters (covered by Branch 1).

8. Branch 1 covers standards policy: sponsorship of BSI: co-ordination of UK interests in international negotiations on standards, Article 100, the GATT agreement, etc; and quality assurance policy and related functions. Branch 2 covers policy on Weights and Measures legislation; packaged goods, unit pricing and quantity marking regulations; liaison with the local government and enforcing authorities; the residue of policy on metrication; and related functions. Its workload has dropped substantially with the reduction of work on metrication. Branch 3 comprises the National Weights and Measures Laboratory (NWML). Branch 4 - the Consumer Safety Unit - is responsible for safety research and safety of a number of products. Branch 5 - the Trading Standards Adviser - provides advice as needed - eg to local authorities, Department of Transport, the National Weights and Measures Laboratory - on trading standards.

9. As part of its drive to reduce staff, the Department of Trade is this year abolishing the Under Secretary post in charge of MQS Division. The intention is to brigade standards and quality assurance work in future with the international trade policy side of the Department, given the importance of international work. The Department of Trade stress that the new emphasis of standards policy will be fully taken into account in the reorganisation. The precise arrangements are currently under study in the context of the Wardale report; but one possiblity is that the Head of Standards Branch would report directly to the Deputy Secretary responsible for trade and EEC policy.

10. Department of Industry have suggested that they should take over responsibility for most of Branch 1 in the present organisation, and the NWML. They suggest that the Department of Trade should retain the responsibilities for consumer protection standards exercised by Branches 2, 4 and 5; and for co-ordination of departmental work on Article 100 and technical barriers to trade (part of Branch 1). At present, Branch 1 and Branch 2 have very little contact. There is slightly more contact between Branch 1 and Branch 3 on Article 100 work, and still more between Branches 1 and 4 on the relevance of standards produced by BSI to consumer safety; but not so strong as to require joint brigading, as the likely re-organisation of MQS Division suggests. The close links between the work of Branches 2 and 3 raises difficulties in relation to a merger of the NWML and National Physical Laboratory (see below). But the the main difficulty is unravelling Branch 1's work internally.

11. If responsibility for standards policy, BSI sponsorship and quality assurance were to go to Department of Industry, the whole of Section C of Branch 1 (Quality Assurance policy, certification and testing, etc) would go - including secretaryship of the Inter-departmental Committee on Quality Assurance and Standards (IQS) - see below. That does not raise significant 'splitting' problems; and there are strong links between the Section and NATLAS. But the work does need to hang together with policy on standards (Section A) and sponsorship of BSI (Section B).

12. Section A discharges a number of functions which would clearly go with the policy responsibility eg liaison with CBI on standards matters, and ILAC. Much of the rest of the section's work concerns co-ordination of Departmental interests relating to the GATT agreement and Article 100 directives; and the consideration of policy on standards in relation to various international negotiations and

obligations with a main objective of eliminating technical barriers to trade, which in turn entails contacts with BSI and consideration of its programme of work. Section B discharges similar 'consideration of policy' functions in respect of the electrical/electronics sector (which is separately organised to deal with standards both nationally and internationally). It is also responsible for the sponsorship arrangements with BSI; the Consumer Standards Advisory Committee which is a BSI sub-committee designed to bring in a consumer voice in standard-making and an integral part of the BSI organisation; central co-ordination of information on standards matters; and the Tripartite Committee for Standardisation (an international body with representatives from DIN, the French national standards organisation, BSI and now the European Commission which meets annually to prepare a joint approach to standards and quality assurance).

13. The 'co-ordination' functions in respect of Article 100 Directives and the GATT agreement - which are fairly mechanical though important - do appear to be separable from the 'policy' aspects of standards, if there is advantage in doing so, though inevitably one or two new rough edges would be created. The co-ordination functions could logically be linked to other work done in Western European & General Division (which in this context is concerned with the elimination of non-tariff barriers to trade). But if there is to be a change of responsibilities, the 'consideration of policy' work in relation to the various international bodies should probably all go to Department of Industry; although in theory one can distinguish discussions on standards as such, eg in CEN, from negotiations about standards with the object of eliminating barriers to trade, in practice the two merge. One of the justifications put forward for a change of responsibilities is that there should be a change in policy emphasis, so DOI would need to be custodians of these negotiations and discussions if they were to achieve such a change. Moreover what goes on in the international fora needs to have a strong influence on the shape of BSI's programme of work and priorities and there should desirably be a strong link between responsibility for international standards and laboratory accreditation and sponsorship and funding of BSI. Responsibility for the Tripartite Committee for Standardisation goes with responsibility for the other international negotiations. Responsibility for BSI's Consumer Standards Advisory Committee is more difficult but probably best links with sponsorship of BSI. Central co-ordination and information on standards logically goes with the policy responsibility.

14. The overall conclusion to be drawn, if the above is right, is that whilst certain fairly mechanical co-ordination functions in respect of the GATT agreement and Article 100 Directives could be left in Department of Trade without disruption of functional unity, the rest of the work of Branch 1 - particularly in relation to international negotiations and discussions where the 'policy' aspects of standards come to the fore - is not easily divided and should probably all go to Department of Industry if responsibility for policy on standards and quality assurance, and for sponsorship of BSI, is transferred. However there would need to be strong links back to Department of Trade because of the relevance of international work on standards to trade policy.

15. The 'sponsorship of BSI' role deserves a further mention. BSI is an independent body established by Royal Charter. Both DT and DOI (and also MOD and DOE) have members on its Board. It is not at present subject to direction from its 'sponsor' department: merely

influence and persuasion (eg by making clear that work on a particular standard will not be acceptable to government and will not achieve recognition through Government agencies). BSI receives about 25% of its income - £3m p.a. - through grant-in-aid from Department of Trade, on a matching contribution basis with industry; the other 50% comes from sale of publications. 25% of that grant-in-aid can be set aside against the need to finance BSI in doing work for government purposes. In practice, Branch 1's work in relation to the sponsorship role is about one third concerned with administering the grant-in-aid, two thirds with discussion of the content of BSI's work.

A MERGER OF THE NATIONAL WEIGHTS AND MEASURES LABORATORY AND THE NATIONAL PHYSICAL LABORATORY

16. The NWML carries out approval and certification functions under the Weights and Measures Acts, checks upon accuracy of standards used by enforcing authorities, and does advisory checks as a service to industry. Quality assurance procedures have been introduced into the approval and certification process which are designed to help the efficiency of industry at the design stage; but the overall bent of the work is towards servicing the 'consumer protection' objectives of the weights and measures legislation. Nevertheless although its present concern is with legal metrology, the Laboratory is a centre of expertise capable of providing services to meet other objectives; and that expertise is akin to the expertise required for industrial metrology and found in the NPL. The present work of the NWML should not be allowed to obscure its potential for a wider use, and the scope for rationalisation offered by a merger.

17. The arguments about responsibility for standards and quality assurance do not in any way hinge upon who is responsible for the Laboratory. The argument for a merger is a distinct one of making best use of expert resources, although clearly a merger would also represent a possible drawing together of the 'levers of influence' in the standards and certification field.

18. Broadly speaking, the arguments in favour of a merger are:

a. there would be substantial economies in the use of laboratory and office accommodation, expensive equipment etc since in due course the NWML could be moved to existing Government accommodation at Teddington and a building in Central London could be given up;

b. there would be useful pooling of expertise and experience;

c. staffing and career management for a combined group of specialists would be easier, particularly for NWML if it were part of a much larger laboratory;

d. a better service could be provided to customers by a laboratory covering both legal and industrial metrology, particularly as legal metrology becomes more complex eg involving microprocessors and sophisticated electronics. The two are commonly combined to advantage in overseas metrology organisations;

e. the two laboratories are both performing like functions - the differences are of degree not kind. Like functions should properly be brigaded to offer a common service;

19. Broadly, the arguments against a merger are:

a. The Secretary of State for Trade's statutory responsibilities for the approval of new designs of weighing and measuring equipment as 'fit for use for trade' are discharged by the NWML and the policy work cannot be separated from the execution. The task of examining equipment for approval is carried out by the engineers doing the assessment work. They should therefore be directly responsible to the Secretary of State, who has to defend their judgements.

b. the work of the NWML and NPL are different not only in the objectives served but in the specifications to which the measurement is done. A lot of physical and industrial metrology involves working to much finer limits than legal metrology, and requires a scientist 's rather than an engineering approach.

c. presentationally there would be some disadvantage in putting the Laboratory which at present deals with measurement relating to consumer protection legislation with a Laboratory concerned inter alia with servicing manufacturer's needs and which is responsible to the Secretary of State for Industry; the local authorities already believe that industry is favoured at the expense of the consumer and that would confirm their fears.

d. the proposed 'rationalisation' within DT, which would put policy on weights and measures legislation in the same Branch as the Laboratory, would accentuate the disadvantages of a merger. Although the 'policy' aspects could be tied in to other parts of Consumer Affairs Division in the Department of Trade, the strongest functional link - between policy on weights and measures and the Laboratory's work - would be lost.

e. there would be heavy dislocation costs and staff losses associated with any move of the NWML to Teddington; and the personnel management advantages of a merger may be harder to secure than appears at first sight

20. A possibility that should at least be considered is that the two laboratories should be merged to provide a full range of metrological services and the basis for a central assessment and certification laboratory; but should be treated as a common service, as in the case of the DTI Establishment and Finance, Economics and Statistics etc Divisions, working to different Secretaries of State on different functions. Thus for example, the merged laboratory could work to the Secretary of State for Trade, and be directed by him, in respect of his functions under the weights and measures legislation; but should work to the Secretary of State for Industry on more general measurement and certification functions. This would require a degree of co-operation in the direction of the Laboratory's work, but would achieve the benefits of a merger without some of the perceived disadvantages. It should be recognised however that the most difficult areas to deal with in the DTI common services organisation are those affecting policy, and such difficulties could be expected also in respect of a 'common' Laboratory, some of whose work would overlap into 'line' responsibilities.

CHANGES SHORT OF A TRANSFER OF RESPONSIBILITIES

21. MQS Division in the Department of Trade is in any case being disbanded, and the lead role on standards will be brigaded with West European and General Division reporting to the Minister for Trade, rather than in the competition and consumer affairs command

(see above). These changes have been occasioned by reduction in work elsewhere in the Division, by staff changes and the need for staff reductions rather than by any wish to put a different emphasis on standards work, but the possibility of that happening as a result of the changes cannot be discounted.

22. One suggestion that has been made is that there should be further secondments of experienced MOD Quality Assurance personnel to do standards and quality assurance work in the Department of Trade; the addition of expertise from that source has previously proved valuable. Staff interchanges between DI and DT should also be relatively easy to arrange, given the common citizenship arrangements. But although such moves might bring about valuable broadenings of attitude and understanding, this would not move arrangements any closer to having a well-established focus for standards, certification and accreditation schemes.

23. One other point has come through strongly. The present 'co-ordination' machinery - the Official Committee for Quality Assurance and Standards (IQS) - is inadequate for the task it has to perform. This is not a reflection on the Department of Trade Chairman, nor indeed on any of the members of the Committee; they have put a lot of work into making the best of a bad job The Committee has confused terms of reference - partly policy advice, partly co-ordination. It is generally thought to operate at too low a level to command follow through action in Departments, despite some attempts to upgrade its membership. The issues with which it deals range from the highly detailed through the general situation to high policy beyond the scope of the Committee, which blurs representation and reporting lines for action on its decision. It is evident that an interdepartmental Steering Group is needed, in part to perform the co-ordinating role identified by the CPRS; but irrespective of whether or not there is any transfer of responsibility for chairing and running the Committee, consideration should be given to its terms of reference, method of operation and membership. Ideally it needs determined chairing at a high level to push through decisions and secure their implementation by member Departments.

SUMMARY

24. a. The arguments for and against a transfer of responsibilities are fairly evenly balanced. Which carry more conviction depends largely upon a judgement as to whether there should be a greater shift in emphasis in the use of standards away from consumer protection and consideration of technical barriers to trade, towards promotion of industrial efficiency, quality and reliability. It must also be said that, taking the subject as a whole - ie production of standards, improvements in design and quality, assessment, certification and accreditation, enchanced recognition and use of standards - Department of Industry appear to have, potentially or actually, more of the 'levers of influence' in their grasp.

b. With one exception ((c) below), no significant new proposals emerged for improving arrangements, without a transfer of responsibilities. Department of Trade have already been active on a number of fronts (eg in promoting the establishment of NATLAS, producing Guidelines for Government representatives on Standards Committees, etc), have proposed a number of new initiatives for following up the CPRS recommendations to Mr Gray's Ad Hoc Group, and are in any case reorganising. The question again boils down to one of policy emphasis rather than organisation or levels of activity. DI by /

c. however, the role, workings and membership of the inter-departmental co-ordination machinery - IQS - would repay further examination whatever else happens (as the Gray Working Group will also recommend).

d. it is feasible to remove responsibility for standards policy etc from the Department of Trade, without too great a dislocation or severing of other important functional links. No responsibilities for consumer safety need by transferred with the work. But although some purely co-ordination functions relating to Article 100 Directives and the GATT agreement could be left in Department of Trade, it is difficult to separate out something called 'policy on standards' which does not carry with it the need to take a lead responsibility for the international negotiations on standards in the context of technical barriers to trade. Essentially therefore any transfer of responsibility for standards and quality assurance would mean transferring practically all the work presently done by Branch 1 of MQS Division.

e. the arguments for a merger of the National Weights and Measures Laboratory and the National Physical Laboratory are largely concerned with possible economies and rationalisation of expert resources and bringing together components of the 'levers of influence'; it would also provide a single UK voice in international work on metrology. The argument against rests upon the intimate connection between the Laboratory's work and the discharge of the Secretary of State for Trade's statutory responsibilities, and the presentational and practical difficulties in changing lines of responsibility. Intermediate arrangements based on the idea of a common service could be further explored. But the arguments about a merger are not crucial to those about a transfer of responsibilities for standards and quality assurance.

MG
February 1982

PRESENT AND PROPOSED ORGANISATION OF METROLOGY, QUALITY ASSURANCE, SAFETY AND STANDARDS DIVISION, DEPARTMENT OF TRADE