

Ref. A08147

PRIME MINISTER

Falklands: Possible Emergency Bill

BACKGROUND

At OD(SA) on 15 April it was provisionally agreed to hold an ad hoc meeting to consider whether early enactment (or Ministerial approval) of an Emergency Bill was likely to be necessary. After OD(SA) today it was decided to cancel the ad hoc meeting and deal with the matter at Cabinet tomorrow.

2. The latest version of a possible Bill, as drafted by officials, has been circulated as a Cabinet paper (C(82) 13). The question was briefly raised by the Foreign and Commonwealth Secretary and the Secretary of State for Trade under Parliamentary Affairs at Cabinet on 14 April (CC(82) 17th Conclusions, Minute 1, Conclusion 2), when the Home Secretary indicated that though not himself enthusiastic about a Bill he was willing to steer one through the House if his colleagues so wished. He has since set out his views in some detail in his minute to you of 16 April. This has now been copied to all Cabinet members, who have been asked to bring it and C(82) 13 to tomorrow's meeting.

3. As drafted the Bill would provide a framework under which Regulations could be made if and when necessary, subject to subsequent affirmative resolution in Parliament within seven days in each case. The possible scope of such Regulations is set out in the explanatory memorandum under Clause 1.

4. There are two issues for decision: is the proposed draft acceptable in principle? and in what circumstances should it be published and enacted? The Home Secretary does not quarrel with the draft, though he makes clear that there is no Home Office need for a Bill at all. The enthusiasts, at official level, are the Foreign and Commonwealth Office, Ministry of Defence, Department of Trade and Treasury. On timing, the Home Secretary argues against making any move before hostilities begin, on the reasonable grounds that negotiations (which should not be jeopardised) are likely to continue until that point; but he is ready to contemplate rapid enactment thereafter, on the basis that actual Regulations would only be made when needed. Other Departments, at official level, have argued

that to wait until hostilities begin (or until Argentina declares war) might leave an awkward gap of a day or so until enactment was complete; during this gap, the Government might be criticised both for being unable to take certain steps which might seem urgent (eg to regularise the position of civilian crews of vessels like Canberra) and also for being forced (by the Trading with the Enemy Act) to take certain others which might seem too draconian. It should be noted that the Trading with the Enemy Act would be automatically triggered only by a declaration of war, not by hostilities in the absence of a declaration; and that the present draft Bill would retrospectively sanction not implementing in full even if war is declared.

HANDLING

5. The Home Secretary should open. You should then seek the views of Departmental Ministers - notably the Foreign and Commonwealth Secretary, Secretary of State for Defence, Secretary of State for Trade and Chancellor of the Exchequer - on the two issues:

- (a) Is this the right Bill, if we have one at all?
 - (b) When, if ever, should it be enacted?
6. On (b), you will also need:
- (i) the views of the Foreign and Commonwealth Secretary on how long negotiations, which could be undesirably prejudiced by enactment of a Bill, are likely to continue;
 - (ii) the views of the Attorney General on the practical difference between an outbreak of hostilities and a declaration of war;
 - (iii) the views of the Business Managers on what Parliament will expect an accept.

CONCLUSION

7. You may be able to sum up as follows:
- (a) The contents of the draft Bill look about right. But the Home Secretary should invite all members of the Cabinet to let him have any considered comments on the point within, say, one week.



- (b) The Bill should not be published (much less enacted) without a further Ministerial decision, which is unlikely to be taken unless:
- (i) Argentina declares war; or
 - (ii) extensive hostilities break out; or
 - (iii) any Minister wishes to reopen the matter in the light of new developments.

ROBERT ARMSTRONG

(approved by Sr. R Arms & signed on his behalf)

19 April 1982