SECRET AND PERSONAL : CMO

Prime Minister

Norman Tebbit forwarded his three Chequers papers to you under cover of this minute.

MCS 2/9

PRIME MINISTER

STRATEGY FOR UNEMPLOYMENT

1 I attach herewith, for the discussion of labour market issues at your September meeting, notes on:

(a) further options to reduce trade union power (Annex A); Paper 9

(b) reducing barriers to employment (Annex B). Paper 10

2 I also attach, as background, a brief general note (Annex C) suggesting a way of structuring our thinking about the labour market. Paper 11

3 For the long haul, policy on training must be of central importance. There is a lot of work in hand on this; in particular,

(i) David Young will be pulling together in the autumn responses to the MSC's discussion document on Adult Training, and considering with me the lines on which to move forward.

(ii) I have commissioned, as E(A) agreed, work on the options for future development of the Youth Training Scheme.

(iii) I am considering further, and will want to discuss initially with Keith Joseph, the possibilities for improving our organisation for training policy and its better co-ordination with education policy, particularly in the FE sector.

4 Also as E(A) agreed, I have commissioned, within my Department in the first instance, work on the way ahead for the Community Programme; this will include consideration of "workfare" schemes.

5 All this work cannot be ready for the early-September meeting. I have provisionally in mind the possibility of drawing the training aspects together in a major White Paper (perhaps with some Green elements) towards the end of November.

6 I am also maintaining the option of publishing in the autumn a more general account of the Government's approach to employment. You will recall that you agreed earlier in the year that this idea should be developed, though the Election then intervened and changed the timing considerations.

NT

N T

August 1983

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August 1983

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10 DOWNING STREET

From the Private Secretary

5 July 1983

Dear Barnaby,

STRATEGY FOR UNEMPLOYMENT

The Prime Minister plans to hold meetings at Chequers on Tuesday 6 and Wednesday 7 September, to consider what the next steps should be in the Government's strategy for creating a more enterprising and prosperous British economy, and thus reversing the growth of unemployment.

The Prime Minister would be grateful if the Secretary of State for Employment would provide papers for the discussion at Chequers under the following headings:

1. How can we reduce more quickly barriers to employment, for example, Wages Councils, and some of the requirements of the Employment Protection Act?

2. What changes should be made, in trade union law and otherwise, to reduce trades union power to obstruct change, reduce labour mobility and generally to damage employment prospects?

3. Passport for a Job (minute by the Chancellor of the Duchy of 1 July).

The Prime Minister has also asked that your Secretary of State be consulted by the Secretary of State for Education and Science, who is producing another paper for this occasion.

Mrs. Thatcher particularly hopes that each paper will avoid generality and will concentrate on the specific decisions which need to be taken.

I would be grateful if you would ensure that these papers are sent to the Prime Minister by Friday 26 August at the latest.

The Prime Minister has asked that the three papers above be produced by your Secretary of State and any of his colleagues or officials whom he decides to involve on a need-to-know basis, without any consultation outside the Department. She has also asked that the fact of the Chequers meetings be closely guarded, that this letter be seen by no-one but your Secretary of State and yourself, and that in commissioning the above papers, you do not disclose their occasion.

I enclose two notes by Alan Walters about recent academic work on unemployment, supplementary benefit and relative wages, to which reference was made at last week's Ministerial discussion; and

and a wide-ranging note which the Prime Minister believes will also form a useful background to the Chequers discussions.

Yours sincerely,

Michael Scholar

J.B. Shaw, Esq.,
Department of Employment.

SP

10A

Caxton House Tothill Street London SW1H 9NF

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Willie Rickett Esq
Private Secretary
10 Downing Street
LONDON SW1

2 August 1983

Dear Willie

STRATEGY FOR UNEMPLOYMENT

... I attach my Secretary of State's papers for the September meeting, which Michael Scholar commissioned in his letter of 5 July to me. We have refrained from commenting in writing on Lord Cockfield's "Passport for a Job" proposal (his minute of 1 July), on which Michael asked us to write. You will see that there is comment on some of the ingredients of his proposal in our paper on "employee protection"; the other main ingredients of the proposal are in the Treasury's field, and I understand Michael has asked them to comment.

The papers are not copied to other Ministers, as you said you would distribute them to the participants nearer the time of the meeting.

Yours ever

Barnaby Shaw

J B SHAW
Principal Private Secretary

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CONFIDENTIAL

Caxton House Tothill Street London SW1H 9NF

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Switchboard 01-213 3000

Michael Scholar Esq
Private Secretary
10 Downing Street
LONDON SW1

1 July 1983

Dear Michael

LABOUR MARKET SHORTCOMINGS

I believe you may be writing round soon to commission work following the Prime Minister's meeting on Wednesday. My Secretary of State is of course ready to respond in relation this Department's work, and to consider further topics which he might offer in addition to those which you will be commissioning.

In addition he asked me to suggest that it would be worth taking stock again of two aspects of labour mobility where the prime responsibility is not his own - housing availability and pension portability.

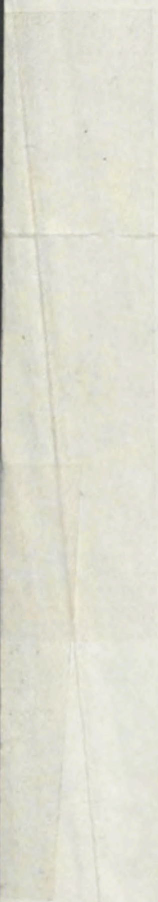
He wonders too whether the Chancellor and the Secretary of State for Education would be willing to consider how we might substantially shift support of first degree students from the mandatory grant system to employers' sponsorships.

Yours ever

Barnaby Shaw

J B SHAW
Principal Private Secretary

CONFIDENTIAL



TRADE UNION POWER

1 The Law

In reforming the law, our approach has been:-

(a) to redress the balance of bargaining power, to reduce unions' ability to command resistance to change and to protect individuals from the abuse of union power;

(b) to ensure that we win and hold the support of public opinion and in particular the majority support of trade unionists themselves; and to avoid moving too far ahead of employer opinion so that employers remain ready to use the remedies provided and unions always have to expect that they might do so;

(c) to avoid any direct role for the Government in the enforcement of the law and to rely on the development of civil remedies rather than criminal sanctions;

(d) to allow for the free development of employer/employee relations by agreement and contract without the intrusion of statutory mechanisms, save to safeguard the interests of others;

(e) to seek to change the nature and behaviour of unions themselves by provision for secret ballots of members;

(f) to maintain an impetus for continuing reform whilst seeking to ensure that each legislative step takes root and holds.

2 This approach has been successful and needs to continue.

3 Proposals for the Bill which is to be introduced on the return of the House have been announced and as a next step we

are already committed to consultations on the need for adequate procedure agreements in essential services and the attachment of immunity to their observance. There is advantage in giving the TUC every encouragement to participate in these consultations or to open the way to legislation if they refuse to do so. We must not be seen to rule out from the outset the possibility of voluntary reform, but the probability is that we will need to contemplate legislation establishing some key features for procedural arrangements to overlay agreements and depriving industrial action of immunity if they are breached. I shall shortly put forward developed proposals. The proposal in the 1983 Bill which will deny unions immunity for industrial action taken without a secret ballot of the members concerned will itself provide a very powerful inhibition in essential services in which industrial action is usually both national and official.

4 I continue to review the full range of other possibilities for changes in the law, measured against the problems, likely support for them and their efficacy. These I identify in the following paragraphs.

5 Closed Shop. We have halted the spread of closed shops and can expect that many will be progressively undermined as they come to need endorsement by secret ballot with a high majority test if both employers and unions are to escape an expensive liability on any dismissal. This will weaken the coercive strength of unions and a number of employers are already making it clear that they will not dismiss on the withdrawal of a union card. It is clearly not easy to accept the continued existence of the pre-entry closed shop and other closed shop agreements are likely to persist - if in a more tolerant and flexible form - for the foreseeable future. Nevertheless, the suggestion sometimes made that the pre-entry shop should be made unlawful would have little more than declaratory effect and I am convinced that such a step would

be much less effective than the secret ballot/unfair dismissal approach we have adopted. As the existing legislation on closed shops has not yet bitten fully, I do not propose any early further action in this area.

6 Procedure Agreements. We concluded in May not to attach unions' immunities to the observance of all procedure agreements as has been advocated by the CBI. This decision was implicit in the Manifesto. I would however not want to lose sight of this possibility and will want to consider it again in the light of responses to the consultations on essential services.

7 Substantive Agreements. There is nothing in law to prevent employers insisting that agreements on terms and conditions of employment must be legally binding. They do not attempt to do so and employers generally still see little or no advantage in having legally binding agreements and disadvantage in being restrained by them. My own strong view is that such agreements must be an objective for the longer term. But legislation deeming all agreements to be legally binding would affront the principle that parties to any agreement should be free to determine themselves both its content and effect and would be very strongly opposed by the great majority of employers. Moreover most agreements would just not bear legal interpretation. For the present we must continue to make clear our own position which is that there needs to be a confident expectation that agreements are observed by both employers and unions. I do however have it in mind to canvass in the prospective consultations that industrial action in essential services which has the objective of changing agreed terms and conditions during the currency of an agreement would not have the protection of immunity.

8 Secondary Action. Immunity for such action has been considerably narrowed to that specifically targetted on commercial contracts between the employer in dispute and his

customers and suppliers. This has been successfully tested in the courts in a number of cases and unions thus far have accepted the outcome. Unions would argue that the present scope of immunity is so narrow as to amount almost to total prohibition if, for example, an employer contrives to conduct his business through an intermediary, an option which some employers have already identified. The cases so far suggest that the apparent complexity of the present provision (which the Courts have overcome) has worked to the advantage of employers. However, my own view is that in principle there should be no immunity for any secondary action. On the other hand, tactically it would be best to take this further step against the background of clear evidence that it is essential.

9 Lay-Off Without Pay. I have developed alternative proposals which would enable employers to lay-off without pay any employee whose work was affected to any extent by industrial action. The first of these has the objective of being able to relieve employers of all their contractual and statutory obligations to employees and hence alleviate their economic losses when a major dispute in a key industry has widespread effects. I am in no doubt that circumstances could arise which would justify emergency legislation of this kind and that its introduction would best be contemplated when they threaten or begin to be experienced. There would then be evident justification for setting aside our commitment to the principle that agreements should be honoured.

10 The second proposal has the different primary objective of assisting employers in combating selective action by their own employees, eg a union deliberately calling-out key employees leaving the remainder of their members at work and on pay. A secondary objective would be to relieve employers of their obligations to all their employees, whether or not they had a direct interest in the dispute, whilst the business was

damaged and action continued. Employer opinion remains very divided on this proposal and, although support for it has grown, it is discouraging that those employers who favour legislation to relieve them, at discretion, from their contractual obligations have made no attempt to re-negotiate their existing agreements or to offer employment to new entrants only with a contractual right to lay them off because of industrial action. Moreover, I cannot escape the suspicion that if national newspapers who have been prominent in urging legislation of this kind used it, they would be faced at the end of a dispute with the threat of industrial action from other groups demanding back pay and that they might well concede such demands. But my principal concern is that it cuts right across the principle that agreements should be honoured.

11 Dismissal of Strikers. The 1982 Act now enables an employer to dismiss - without the possibility of a claim of unfair dismissal - those taking part in industrial action at any establishment subject only to equal treatment being accorded all those taking action at the establishment at the date of dismissal. This is an important new sanction which, so far as I am aware, has yet to be used. It could prove particularly useful where action was being taken at a number of locations. The only further step which might be contemplated would be to provide that employers were entirely free to decide which and how many employees to dismiss, but I first want to see how the 1982 Act operates in practice.

12 Immunities. Our approach has been to stop some considerable way short of revoking all immunity for the inducement of breaches of contracts of employment, whilst narrowing its scope in a number of different ways (eg by the redefinition of trade dispute, by curtailing secondary action and picketing and coercive recruitment practices). Above all else union funds have been opened up to claims for damages. The 1983 Bill will continue this approach in

attaching union immunity to secret strike ballots and my proposals on procedure arrangements for essential services will take this approach yet further.

13 I am sure that the progressive erosion of immunity for specific actions is to be preferred to a return to the pre-1906 position. This would mean that unions and individuals would always be liable for damages in inducing industrial action unless they ensured that notice was given no shorter than whatever was required in individual contracts of employees and employees themselves had also given that notice. In short, the inducement of industrial action would have no protection unless the employment relationships had been severed before its onset. To go this far would be wholly unexpected by employers among whom only minimal support has ever developed for such a step. It would also put at risk the support we have carefully developed amongst union members for our policies. We would certainly be accused - however inaccurately - of legislating away "the right to strike".

14 Restrictive Practices. One suggestion has been that a new jurisdiction might be contemplated providing remedies when a union or group of employees imposes or maintains restrictive working practices of an unreasonable kind, eg demarcations, resistance to new training arrangements. Action might be initiated by an employer or a public authority. The remedy would probably need to be an enforceable order, finally directed to individuals, as damages would in many cases be difficult to conceive or assess. A refusal to obey an order would therefore probably need the potential sanction of a fine or just possibly imprisonment.

15 I am sure that this suggestion should not be adopted. To direct in detail and under threat of sanction how work must be done would be a recipe for conflict and probably largely ineffective. The eradication of restrictive practices must be a responsibility for managements and many have now begun to demonstrate what can be achieved.

(2) Other Approaches

16 However important, the reform of industrial relations law is only one means of contending with unacceptable manifestations of union power. In my view, there are other key components which include a higher professionalism in management, the decisions we take on industrial matters and the will and purpose we demonstrate in seeing them through, the general atmosphere we can help to create by all we do and say and how we handle industrial relations problems in the public sector, particularly where we have a direct responsibility.

17 I provide no more than a checklist of other approaches already adopted or which need to be remembered:-

(a) the freeing-up and privatisation of the public sector to competition, thereby loosening union monopoly control and demonstrating more clearly to employees that their jobs depend on the success of enterprise;

(b) the decentralisation of bargaining arrangements, but only where on a case by case assessment this would reduce union power and be likely to result in more realistic clearing prices for labour in different parts of the UK; the bargaining structures in the public sector (ie national and local government, the NHS and the nationalised industries) are probably as significant a factor as union power (which they can underpin) in establishing a common price for labour in what should be very different markets;

(c) the need for employers, with our support, to establish a fuller relationship with their employees in the communication of information about the enterprise and the threat of competition and, as they judge necessary, in consultation with them about how performance can be improved; in many cases union power has come to fill a vacuum;

(d) more generally, the need to educate employees about the relationship between pay and jobs and, where we have direct influence, to demonstrate the effects of that relationship;

(e) to be seen as the Government to be ready to resist unreasonable union demands and ready to contend with the effects of industrial action;

(f) to consider, case by case, whether the present institutional representation of trade unions on public bodies is always appropriate and what is the trade off between the possible advantages of securing their involvment and providing them with an authority to block or delay change.

REDUCING BARRIERS TO EMPLOYMENT: EMPLOYEE PROTECTIONS

This note considers the remaining statutory mechanisms which determine pay and reviews the full range of individual statutory employment rights.

2. In summary, my recommendations are:-

(a) the Wages Councils should be abolished at the earliest opportunity, ie the 1985/86 Session, but that there would be no advantage in tampering with the system in the interim and before we can denounce the relevant International Labour Convention (paras 4-5);

(b) it should be noted that it would be possible to abolish the two Agricultural Wages Boards earlier and that the governing Convention would in any case seem to allow the exclusion of particular categories, eg young persons, from their scope (para 2);

(c) the rights to guarantee and redundancy payments should continue, although the former should continue to decline in real value and the latter need to be kept under review, particularly with the possibility in mind of adapting them to developments in training arrangements (paras 10-19);

(d) all employers employing 5 or fewer employees should be entirely excluded from the unfair dismissal provisions (para 26(i));

(e) more important, the qualifying period for protection against unfair dismissal should be increased to 2 years' continuous employment in all other employments (para 26 (ii));

(f) as a consequence, the qualifying period for protection against dismissal on grounds of pregnancy should also be increased to 2 years (para 28);

3. I make no recommendations for changes to other protections which, for completeness, are described in the Appendix.

REDUCING BARRIERS TO EMPLOYMENT: EMPLOYEE PROTECTIONS

(1) Wages

In following the principle that employers should be free to offer (and job seekers free to accept) employment at wages determined by their individual circumstances and the market, we have repealed the statutory mechanisms allowing comparability claims (eg Schedule 11 of the Employment Protection Act 1975) and ended the Fair Wages Resolution. Perforce, we have to retain and extend equal pay legislation to meet the requirements of the EC Directive.

2. The two Agricultural Wages Boards and the Wages Councils provide the remaining statutory obstacles. The Wages Boards are the responsibility of the Agriculture Ministers and are governed by our ratification of International Labour Convention No. 99. This Convention (unlike Convention No. 26 which governs the Wages Councils) would, I understand, permit the exclusion of particular classes, eg young persons, and the 10 yearly time window for its denunciation opened in August 1983 and lasts for a year.

3. As for the Wages Councils, the Attorney General has advised that legislation to exclude particular categories (eg young persons, part-time workers, employees of small firms) would be in breach of Convention No. 26 which cannot be denounced before June 1985, with denunciation becoming effective 12 months later.

4. I recommend that the Wages Councils system should be abolished, with legislation in the 1985/86 Session. A few months before the introduction of a Bill, we would need to consult on our intention to denounce Convention No. 26 so that this can be effected in 1986. There is no advantage in any earlier announcement.

5. This decision taken, I am equally sure it would be very much a mistake to tamper with the system in the interim to the extent that we could without breaching the Convention. All our

previous discussions identified only two possibly worthwhile options. First, we could impose a statutory duty on Councils to take account of ability to pay, employment implications, etc. This would require legislation (in the 1984/85 Session), might well prove largely ineffective and would be unenforceable. Second, we could start the lengthy statutory procedure to abolish, say, the two large Retail Councils. In doing so we would not have ready and unanimous support from the employers' associations concerned. There would need to be a statutory inquiry, conducted by ACAS, to consider objections which would be bound to involve a detailed survey of earnings and speculation on the effects of abolishing the Councils. This could only fuel opposition to the proposal and it is most unlikely that it could be implemented before 1985. Either of these options would cloud and impede the prime objective of ending the Wages Council system at the earliest possible opportunity.

(2) Employment Protection Rights

6. I have again reviewed the full range of individual statutory employment rights. Inevitably they all impose requirements of one kind or another on employers, as does a range of other statutory, contractual and common law obligations which flows from the employment of labour, eg NI contributions, tax deductions, sick pay, insurance liability.

7. The tests therefore to be applied are whether there are good grounds for believing that individually or in combination they constitute a significant obstacle to the creation of more jobs or otherwise inhibit the growth of businesses; and on the other hand the benefits they might provide for the smoother operation of the labour market and a desirable stability for employer/employee relationships. It is not possible entirely to ignore developed views on what an employer might reasonably bear by way of obligation to his employees over and above the wages he pays. For some of the rights there are international constraints and public expenditure implications.

8. In the following paragraphs I identify those rights for which changes might be contemplated and make recommendations.

9. For completeness, the Appendix to this note identifies all other rights which I have concluded need to be retained without change, although the qualifying period for protection against dismissal because of pregnancy and for the right to reinstatement after confinement could be brought into line with any changes in the availability of protection against unfair dismissal.

(a) <u>Guarantee payments</u>

10. After one month's employment, employees are entitled to a payment for up to 5 days in any 3 month period of £9.50 a day for each full day for which the employer cannot provide work and if the employee would have been ready to undertake suitable alternative work. There is no entitlement to a payment if the lack of work is due to industrial action involving any employee of the employer or an associated employer. The value of the daily payment has been progressively reduced in real terms. About 1½ million employees are exempted from these arrangements following joint applications for statutory exemption on the basis of equivalent collective agreements.

11. In principle, guarantee payments could be left to collective agreements or individual contracts of employment with employers being left to decide what, if anything, they were prepared to afford. There are agreements governing short-time working over much of the primary sector. There is, however, a balance to be struck between the obligations employers might be reasonably expected to bear in recruiting and retaining labour and organising their flow of work and the otherwise residual obligation to pay unemployment benefit to employees temporarily without work, the cost of which falls to public expenditure. Unemployment benefit is not paid where an entitlement to guarantee pay exists. Although it is not possible to calculate the likely additional cost to the National Insurance Fund of repealing this protection, it could prove significant. Changes were made in the 1980 Act, at the request of industry, to limit employers' obligation to 5 days

in any 3 month period rather than in a fixed calendar quarter and there are no pressures to end it.

12. I recommend the retention of this right but will ensure that in the annual statutory reviews of the amount of guarantee pay it continues to decline in real value.

(b) Redundancy payments

13. After 2 years' employment, a redundant employee is entitled to a payment calculated at ½ a week's pay for each year of employment until aged 21, 1 week's pay for each year until aged 40 and 1½ week's pay for service thereafter, subject to only the last 20 years of employment being reckonable. Employment under the age of 18 does not count. There is an earnings ceiling, currently £140 a week. The average payment is £1,331; the maximum £4,200. In 1981 40% of all employees entitled to redundancy pay received additional compensation from their employers. Employers receive a rebate, currently 41%, from the Redundancy Fund of the payments they make and the Fund is entirely financed by employers' and (since 1982) employees' contributions, the latter providing more than half the finance in 1983/84.

14 The primary purpose has always been to reduce resistance to job change and so facilitate labour mobility, not to reduce possible hardship. The gearing of entitlement to payments does however reflect in part a recognition that the longer the service of an employee the greater the accrued value to him of the job lost.

15. I am in no doubt that the primary economic purpose of redundancy payments is being achieved and is still necessary. Resistance to closures and redundancies has clearly been weakened by the prospect of compensation and there are very many examples of employees continuing to be ready to accept the loss of their jobs despite higher unemployment and attempts by their unions to mount sustained resistance.

16. Nevertheless, this alone would not justify the continuance of a general statutory scheme and, in principle, it could be left to employers on a view of their own economic interests to decide whether they needed to make payments to overcome resistance to redundancy. In my view, however, the counter considerations are conclusive. First, employers very much welcome the insurance principle which rebates from the Fund provide; there is no longer any significant pressure from employers to end the scheme. Secondly, removal of the right could stimulate trade unions to intensify resistance to redundancy and provide them with a recruitment slogan. Thirdly, employees themselves now contribute significantly to the costs. Fourthly, somewhat paradoxically, the statutory entitlement provides a limitation on expectations on compensation for the generality of employment and the real value of the payments has been falling without observable protest. Lastly, it is not easy to ignore some concept of equity by not providing relatively modest compensation for employees who are not members of well-organised and powerful groups which would always be able to command more.

17. I therefore recommend the continuance of the scheme.

18. As to possible changes to it:-

(i) Lump sum/income support. This would be to pay only part of the accrued entitlement at the time of redundancy and pay the remainder weekly to those who remain unemployed, either on top of or instead of unemployment benefit. The first course could reduce the incentive to find another job until full entitlement was exhausted and run counter to our objectives. The second would produce some public expenditure saving, but in effect would simply amount to cutting the entitlement. Employers would not welcome having to pay for income support after employment ended or the administrative burden. In both cases the inducement to accept job loss which a lump sum payment provides would undoubtedly be considerably weakened.

(ii) Lump sum/income support only on the acceptance of training. The same considerations would apply. There is in any case no detectable reluctance to accept opportunities for training and, under present arrangements, only a very small proportion of adults made redundant could immediately be offered a training course.

(iii) Exclude or treat differently small or new firms. The 2 year qualifying period already provides a relief and it would not be easy to justify some longer period in either case; the accrual of entitlement is in any case slow. The total exclusion of small firms could produce the anomaly of the long-service employee being made redundant without statutory compensation even though his employer remained in very profitable business. The major difficulty is however the administrative complexities for National Insurance contributions with differential rates for both employers and employees which would need to change (and in the case of small firms change again) over time.

(iv) Exclusion of young persons. Employment under the age of 18 does not qualify towards entitlement to a payment or its accrual. If it were nevertheless judged that the possibility of redundancy after more than two years' employment thereafter was one factor which inhibited employers engaging more young people, entitlement could be delayed until employees were aged, say 21. An employee at the age of 21 might then be afforded an entitlement based on employment from the age of 18, ie 1 week's pay rather than 2 weeks at present. The relief to employers would be minimal.

19. Given the high level of unemployment and the continuing need to secure acceptance of redundancy, I have concluded that none of these possibilities, which could weaken the inducement to accept job loss, should be adopted at present. I therefore make no recommendations for changes to the scheme. I nevertheless intend to keep its provisions under review and, in particular, to have in

mind the possibility of adapting them to interact with the development of training arrangements.

(c) Unfair dismissal

20. All employees with one year's service (2 years with employers with 20 or fewer employees) have a protection against arbitrary dismissal, exercisable by a claim to an industrial tribunal for re-instatement or compensation. In 1981 37,000 claims were made, almost two-thirds of which did not reach a hearing being either withdrawn or settled by agreement. Of the 13,500 claims which were considered by tribunals, over 10,000 were dismissed. Of the 3,000 awards made, 150 were for re-instatement and 1,950 for financial compensation, a third of which were for less than £500 with the median award being £963. In most of the remainder the parties were left to decide the remedy.

21. The concept of a protection against unfair dismissal (first established in the Industrial Relations Act 1971) is now generally accepted and needs to continue; it provides the essential basis for the approach adopted in the 1980 and 1982 Acts to the closed shop and dismissals for non-membership of unions, for which very much higher levels of compensation can be awarded against unions as well as employers.

22. Employers' concerns are directed not to the principle or even the possibility of having to pay compensation, but the uncertainty of the prospect of having to contend with claims following dismissal, the cost (including legal costs) of defending claims and the growth of legal complexity. These concerns cannot be decisive in a decision whether to recruit more employees but when realised can undoubtedly be burdensome. Larger employers, with professional resource, now cope with little difficulty, but for some other employers the difficulties are often greater and most complaints stem from the first unfair dismissal claim against them.

23. I am examining proposals for reducing legalism in the tribunal system. These include improvements in the conciliation process

and in the conduct of tribunal proceedings, and also ways of restricting appeals to the Employment Appeal Tribunal. These measures can be introduced by administrative and judicial action; primary legislation would not be required. I believe that they would be welcomed by employers.

24. There are, in addition, a number of options for limiting the scope of the provisions, although those concerning dismissal for non-union membership would still need to apply to all employment. These are:-

(i) exclude all very small employers (ie those employing 5 or fewer), in line with the exclusion for the right to return to work after confinement; about 1½ million employees would be affected;

(ii) increase the qualifying period for protection to, say, 2 years for all employment, which would exclude about 26% of all claims now made;

(iii) redefine small firms to some higher ceiling of employment, eg from 20 to 50 or less employees (which would exclude 4% of claims now made); and/or increase the qualifying period of employment for small firms to longer than 2 years (a 5 years' qualifying period for firms employing 20 or less would exclude about 7% of claims now made);

(iv) provide an exclusion for all new small firms for, say, the first 5 years of trading;

(v) make protection dependent on an age qualification, eg only after age 21.

25. In considering these options we need to be influenced by employers' concern about any additional complexity of provision; the possibility that exclusion based on the number of employees employed would operate against recruitment where this would take an employer above the ceiling; and the criticism to be faced that any limitation of scope is in effect allowing more employers to dismiss employees unfairly.

26. With these considerations in mind, I recommend:-

(i) the exclusion of all very small employers, ie those employing 5 or fewer; such an exclusion is precedented in the right to return to work after confinement and the very size of such firms inevitably makes employer/employee relations different;

(ii) the extension of the qualifying period to 2 years for all employment; this is a better alternative to redefining the present small firm exclusion at some higher figure and would avoid the disincentive effect this could have on additional recruitment.

27. I am not disposed to go further. A specific exclusion for new firms for some period could prove difficult to justify to other employers and there could be problems of definition and for administration. The increase in the qualifying period I recommend would give relief to all new firms of whatever size. Nor am I in favour of a specified age qualification. The second recommendation I make would in any case exclude anyone under the age of 18 from making a claim.

28. I have also concluded that if the changes I recommend are adopted it would be right also to increase the qualifying period for protection against dismissal on grounds of pregnancy from one year to 2, but not to change further the qualifying period (already 2 years) for a right to return to work after confinement (see para 9 of this note and paras 6(a) and (c) of the Appendix).

APPENDIX TO ANNEX B

Rights which need to be retained

Employers are required to give employees a written statement, not later than 13 weeks after they start work, of their main terms and conditions of employment, with an additional note on disciplinary rules and grievance procedures. Additionally, all employees are entitled to receive itemised pay statements when paid. There are no complaints from employers that this is burdensome and the employment relationship is established clearly.

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demands for repeal and it is not unreasonable for an employee to be able to know why he was sacked, particularly as this could affect his chances of securing another job.

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(a) After 2 years' employment, an employee under notice of redundancy is entitled to reasonable time off to look for work or make arrangements for training for another job. This can help speed job change without intervening unemployment.

(b) Since 1980 pregnant employees have the right not to be unreasonably refused time off to attend appointments for ante-natal care when arranged on medical advice. This is now generally accepted as a necessary safeguard.

(c) Subject, among other considerations, to the circumstances of an employer's business and the effect on it of an employee's absence, employees are entitled to time off to perform specified public duties, eg as a justice of the peace, as a member of a Health Authority. There are no complaints from employers and the provision underpins the reliance on voluntary public service.

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confinement. Maternity pay (nine tenths of normal pay less maternity allowance) is reimbursed in full from the Maternity Pay Fund. Employers need to claim the refund but face no direct costs. There is no evidence that the right inhibits employment.

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CONFIDENTIAL

ANNEX C

THE LABOUR MARKET : APPROACHES TO IMPROVEMENT

1. The most directly effective policies for increasing employment will be those which help to maximise demand for the products of the British economy. Within a sound financial framework, we have to look first to industrial policies - for new technology, innovation, small businesses and the like (and, much more arguably, regional policy). The prime direct criteria for these policies need to be those of encouraging profitable, competitive and adaptable business, not those of employment. It may occasionally be feasible to have an eye to job-support aspects - for example, leaning towards labour-intensive sectors rather than capital-intensive ones if other considerations are broadly equal - but for the most part the pursuit of job creation as a leading test of industrial policy risks being self-defeating.

2. The main focus of labour-market policies as such must be towards helping improve business competitiveness. We have to make the labour-market as responsive as we can in all respects to the needs of the product market. In the particular circumstances of very high unemployment this basic task needs to be supplemented by two other aims: to keep down the level of total labour supply where we reasonably can, and to help provide temporary work of community benefit outside the market.

3. It is useful to view this package of tasks as requiring us to tackle several broad aspects, distinct but needing to be seen in a coherent framework as complementary and inter-acting.

The main ones are perhaps these:

(a) Labour cost - the relationship between pay and jobs, and between productivity and reward.

Our potential instruments here include general explanation and persuasion, and example-setting in the public sector; the removal of statutory provisions which hold wages above market-clearing levels; and lowering youth wages either directly or by leverage methods like the Young Workers Scheme.

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We are making a mounting effort here. The Youth Training Scheme is a major enterprise; and we must turn increasing attention to adult training and re-training.

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Industry itself must be the main mover, but we can selectively ease rigidities or set examples by schemes like Job Release and Job Splitting.

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important steps in re-shaping the IR framework. On information, we still need a public employment service, but probably a tauter one than we have now. On mobility, housing and pensions both matter. We need wherever possible to ease fiscal or other burdens which may act as a drag upon employment, including self-employment.

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We cannot and should not abandon our commitment to fairness in respect for example of dismissal, race and sex. But we need to put across more widely that the quest for perfection has costs for business, and that these may have to be paid in lost jobs. A balance has to be struck - and struck in the real circumstances of tough markets and high unemployment.

(f) The social-security safety net.

There is a balance to be struck here, too, between meeting proper social concerns and sustaining incentives to work.

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We do a variety of things like rehabilitation and sheltered jobs for the disabled, and the Community Programme for the long-term unemployed. We need to shape this help as cost-effectively as we can to support the working of the market as a whole. For example, CP should renew the confidence and work-habit of participants to improve their wider employability.

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ANNEX B

PAPER 10 (S/S Employment)

REDUCING BARRIERS TO EMPLOYMENT: EMPLOYEE PROTECTIONS

This note considers the remaining statutory mechanisms which determine pay and reviews the full range of individual statutory employment rights.

2. In summary, my recommendations are:-

(a) the Wages Councils should be abolished at the earliest opportunity, ie the 1985/86 Session, but that there would be no advantage in tampering with the system in the interim and before we can denounce the relevant International Labour Convention (paras 4-5);

(b) it should be noted that it would be possible to abolish the two Agricultural Wages Boards earlier and that the governing Convention would in any case seem to allow the exclusion of particular categories, eg young persons, from their scope (para 2);

(c) the rights to guarantee and redundancy payments should continue, although the former should continue to decline in real value and the latter need to be kept under review, particularly with the possibility in mind of adapting them to developments in training arrangements (paras 10-19);

(d) all employers employing 5 or fewer employees should be entirely excluded from the unfair dismissal provisions (para 26(i));

(e) more important, the qualifying period for protection against unfair dismissal should be increased to 2 years' continuous employment in all other employments (para 26 (ii));

(f) as a consequence, the qualifying period for protection against dismissal on grounds of pregnancy should also be increased to 2 years (para 28);

3. I make no recommendations for changes to other protections which, for completeness, are described in the Appendix.

REDUCING BARRIERS TO EMPLOYMENT: EMPLOYEE PROTECTIONS

(1) Wages

In following the principle that employers should be free to offer (and job seekers free to accept) employment at wages determined by their individual circumstances and the market, we have repealed the statutory mechanisms allowing comparability claims (eg Schedule 11 of the Employment Protection Act 1975) and ended the Fair Wages Resolution. Perforce, we have to retain and extend equal pay legislation to meet the requirements of the EC Directive.

2. The two Agricultural Wages Boards and the Wages Councils provide the remaining statutory obstacles. The Wages Boards are the responsibility of the Agriculture Ministers and are governed by our ratification of International Labour Convention No. 99. This Convention (unlike Convention No. 26 which governs the Wages Councils) would, I understand, permit the exclusion of particular classes, eg young persons, and the 10 yearly time window for its denunciation opened in August 1983 and lasts for a year.

3. As for the Wages Councils, the Attorney General has advised that legislation to exclude particular categories (eg young persons, part-time workers, employees of small firms) would be in breach of Convention No. 26 which cannot be denounced before June 1985, with denunciation becoming effective 12 months later.

4. I recommend that the Wages Councils system should be abolished, with legislation in the 1985/86 Session. A few months before the introduction of a Bill, we would need to consult on our intention to denounce Convention No. 26 so that this can be effected in 1986. There is no advantage in any earlier announcement.

5. This decision taken, I am equally sure it would be very much a mistake to tamper with the system in the interim to the extent that we could without breaching the Convention. All our

previous discussions identified only two possibly worthwhile options. First, we could impose a statutory duty on Councils to take account of ability to pay, employment implications, etc. This would require legislation (in the 1984/85 Session), might well prove largely ineffective and would be unenforceable. Second, we could start the lengthy statutory procedure to abolish, say, the two large Retail Councils. In doing so we would not have ready and unanimous support from the employers' associations concerned. There would need to be a statutory inquiry, conducted by ACAS, to consider objections which would be bound to involve a detailed survey of earnings and speculation on the effects of abolishing the Councils. This could only fuel opposition to the proposal and it is most unlikely that it could be implemented before 1985. Either of these options would cloud and impede the prime objective of ending the Wages Council system at the earliest possible opportunity.

(2) <u>Employment Protection Rights</u>

6. I have again reviewed the full range of individual statutory employment rights. Inevitably they all impose requirements of one kind or another on employers, as does a range of other statutory, contractual and common law obligations which flows from the employment of labour, eg NI contributions, tax deductions, sick pay, insurance liability.

7. The tests therefore to be applied are whether there are good grounds for believing that individually or in combination they constitute a significant obstacle to the creation of more jobs or otherwise inhibit the growth of businesses; and on the other hand the benefits they might provide for the smoother operation of the labour market and a desirable stability for employer/employee relationships. It is not possible entirely to ignore developed views on what an employer might reasonably bear by way of obligation to his employees over and above the wages he pays. For some of the rights there are international constraints and public expenditure implications.

8. In the following paragraphs I identify those rights for which changes might be contemplated and make recommendations.

9. For completeness, the Appendix to this note identifies all other rights which I have concluded need to be retained without change, although the qualifying period for protection against dismissal because of pregnancy and for the right to reinstatement after confinement could be brought into line with any changes in the availability of protection against unfair dismissal.

(a) Guarantee payments

10. After one month's employment, employees are entitled to a payment for up to 5 days in any 3 month period of £9.50 a day for each full day for which the employer cannot provide work and if the employee would have been ready to undertake suitable alternative work. There is no entitlement to a payment if the lack of work is due to industrial action involving any employee of the employer or an associated employer. The value of the daily payment has been progressively reduced in real terms. About 1½ million employees are exempted from these arrangements following joint applications for statutory exemption on the basis of equivalent collective agreements.

11. In principle, guarantee payments could be left to collective agreements or individual contracts of employment with employers being left to decide what, if anything, they were prepared to afford. There are agreements governing short-time working over much of the primary sector. There is, however, a balance to be struck between the obligations employers might be reasonably expected to bear in recruiting and retaining labour and organising their flow of work and the otherwise residual obligation to pay unemployment benefit to employees temporarily without work, the cost of which falls to public expenditure. Unemployment benefit is not paid where an entitlement to guarantee pay exists. Although it is not possible to calculate the likely additional cost to the National Insurance Fund of repealing this protection, it could prove significant. Changes were made in the 1980 Act, at the request of industry, to limit employers' obligation to 5 days

in <u>any</u> 3 month period rather than in a fixed calendar quarter and there are no pressures to end it.

12. I recommend the retention of this right but will ensure that in the annual statutory reviews of the amount of guarantee pay it continues to decline in real value.

(b) Redundancy payments

13. After 2 years' employment, a redundant employee is entitled to a payment calculated at ½ a week's pay for each year of employment until aged 21, 1 week's pay for each year until aged 40 and 1½ week's pay for service thereafter, subject to only the last 20 years of employment being reckonable. Employment under the age of 18 does not count. There is an earnings ceiling, currently £140 a week. The average payment is £1,331; the maximum £4,200. In 1981 40% of all employees entitled to redundancy pay received additional compensation from their employers. Employers receive a rebate, currently 41%, from the Redundancy Fund of the payments they make and the Fund is entirely financed by employers' and (since 1982) employees' contributions, the latter providing more than half the finance in 1983/84.

14 The primary purpose has always been to reduce resistance to job change and so facilitate labour mobility, not to reduce possible hardship. The gearing of entitlement to payments does however reflect in part a recognition that the longer the service of an employee the greater the accrued value to him of the job lost.

15. I am in no doubt that the primary economic purpose of redundancy payments is being achieved and is still necessary. Resistance to closures and redundancies has clearly been weakened by the prospect of compensation and there are very many examples of employees continuing to be ready to accept the loss of their jobs despite higher unemployment and attempts by their unions to mount sustained resistance.

16. Nevertheless, this alone would not justify the continuance of a general statutory scheme and, in principle, it could be left to employers on a view of their own economic interests to decide whether they needed to make payments to overcome resistance to redundancy. In my view, however, the counter considerations are conclusive. First, employers very much welcome the insurance principle which rebates from the Fund provide; there is no longer any significant pressure from employers to end the scheme. Secondly, removal of the right could stimulate trade unions to intensify resistance to redundancy and provide them with a recruitment slogan. Thirdly, employees themselves now contribute significantly to the costs. Fourthly, somewhat paradoxically, the statutory entitlement provides a limitation on expectations on compensation for the generality of employment and the real value of the payments has been falling without observable protest. Lastly, it is not easy to ignore some concept of equity by not providing relatively modest compensation for employees who are not members of well-organised and powerful groups which would always be able to command more.

17. I therefore recommend the continuance of the scheme.

18. As to possible changes to it:-

(i) Lump sum/income support. This would be to pay only part of the accrued entitlement at the time of redundancy and pay the remainder weekly to those who remain unemployed, either on top of or instead of unemployment benefit. The first course could reduce the incentive to find another job until full entitlement was exhausted and run counter to our objectives. The second would produce some public expenditure saving, but in effect would simply amount to cutting the entitlement. Employers would not welcome having to pay for income support after employment ended or the administrative burden. In both cases the inducement to accept job loss which a lump sum payment provides would undoubtedly be considerably weakened.

(ii) Lump sum/income support only on the acceptance of training. The same considerations would apply. There is in any case no detectable reluctance to accept opportunities for training and, under present arrangements, only a very small proportion of adults made redundant could immediately be offered a training course.

(iii) Exclude or treat differently small or new firms. The 2 year qualifying period already provides a relief and it would not be easy to justify some longer period in either case; the accrual of entitlement is in any case slow. The total exclusion of small firms could produce the anomaly of the long-service employee being made redundant without statutory compensation even though his employer remained in very profitable business. The major difficulty is however the administrative complexities for National Insurance contributions with differential rates for both employers and employees which would need to change (and in the case of small firms change again) over time.

(iv) Exclusion of young persons. Employment under the age of 18 does not qualify towards entitlement to a payment or its accrual. If it were nevertheless judged that the possibility of redundancy after more than two years' employment thereafter was one factor which inhibited employers engaging more young people, entitlement could be delayed until employees were aged, say 21. An employee at the age of 21 might then be afforded an entitlement based on employment from the age of 18, ie 1 week's pay rather than 2 weeks at present. The relief to employers would be minimal.

19. Given the high level of unemployment and the continuing need to secure acceptance of redundancy, I have concluded that none of these possibilities, which could weaken the inducement to accept job loss, should be adopted at present. I therefore make no recommendations for changes to the scheme. I nevertheless intend to keep its provisions under review and, in particular, to have in

mind the possibility of adapting them to interact with the development of training arrangements.

(c) Unfair dismissal

20. All employees with one year's service (2 years with employers with 20 or fewer employees) have a protection against arbitrary dismissal, exercisable by a claim to an industrial tribunal for re-instatement or compensation. In 1981 37,000 claims were made, almost two-thirds of which did not reach a hearing being either withdrawn or settled by agreement. Of the 13,500 claims which were considered by tribunals, over 10,000 were dismissed. Of the 3,000 awards made, 150 were for re-instatement and 1,950 for financial compensation, a third of which were for less than £500 with the median award being £963. In most of the remainder the parties were left to decide the remedy.

21. The concept of a protection against unfair dismissal (first established in the Industrial Relations Act 1971) is now generally accepted and needs to continue; it provides the essential basis for the approach adopted in the 1980 and 1982 Acts to the closed shop and dismissals for non-membership of unions, for which very much higher levels of compensation can be awarded against unions as well as employers.

22. Employers' concerns are directed not to the principle or even the possibility of having to pay compensation, but the uncertainty of the prospect of having to contend with claims following dismissal, the cost (including legal costs) of defending claims and the growth of legal complexity. These concerns cannot be decisive in a decision whether to recruit more employees but when realised can undoubtedly be burdensome. Larger employers, with professional resource, now cope with little difficulty, but for some other employers the difficulties are often greater and most complaints stem from the first unfair dismissal claim against them.

23. I am examining proposals for reducing legalism in the tribunal system. These include improvements in the conciliation process

and in the conduct of tribunal proceedings, and also ways of restricting appeals to the Employment Appeal Tribunal. These measures can be introduced by administrative and judicial action; primary legislation would not be required. I believe that they would be welcomed by employers.

24. There are, in addition, a number of options for limiting the scope of the provisions, although those concerning dismissal for non-union membership would still need to apply to all employment. These are:-

(i) exclude all very small employers (ie those employing 5 or fewer), in line with the exclusion for the right to return to work after confinement; about 1½ million employees would be affected;

(ii) increase the qualifying period for protection to, say, 2 years for all employment, which would exclude about 26% of all claims now made;

(iii) redefine small firms to some higher ceiling of employment, eg from 20 to 50 or less employees (which would exclude 4% of claims now made); and/or increase the qualifying period of employment for small firms to longer than 2 years (a 5 years' qualifying period for firms employing 20 or less would exclude about 7% of claims now made);

(iv) provide an exclusion for all new small firms for, say, the first 5 years of trading;

(v) make protection dependent on an age qualification, eg only after age 21.

25. In considering these options we need to be influenced by employers' concern about any additional complexity of provision; the possibility that exclusion based on the number of employees employed would operate against recruitment where this would take an employer above the ceiling; and the criticism to be faced that any limitation of scope is in effect allowing more employers to dismiss employees unfairly.

26. With these considerations in mind, I recommend:-

(i) the exclusion of all very small employers, ie those employing 5 or fewer; such an exclusion is precedented in the right to return to work after confinement and the very size of such firms inevitably makes employer/employee relations different;

(ii) the extension of the qualifying period to 2 years for all employment; this is a better alternative to redefining the present small firm exclusion at some higher figure and would avoid the disincentive effect this could have on additional recruitment.

27. I am not disposed to go further. A specific exclusion for new firms for some period could prove difficult to justify to other employers and there could be problems of definition and for administration. The increase in the qualifying period I recommend would give relief to all new firms of whatever size. Nor am I in favour of a specified age qualification. The second recommendation I make would in any case exclude anyone under the age of 18 from making a claim.

28. I have also concluded that if the changes I recommend are adopted it would be right also to increase the qualifying period for protection against dismissal on grounds of pregnancy from one year to 2, but not to change further the qualifying period (already 2 years) for a right to return to work after confinement (see para 9 of this note and paras 6(a) and (c) of the Appendix).

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PAPER 11

(by S/S Employment)

ANNEX C

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