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From
Sir Terence Beckett CBE
Director-General

CBI

Prime Minister (2)

CBI are making good progress in assembling their submission. No need to read, merely to be aware.

AT 8/1

The Rt Hon Margaret Thatcher, MP
Prime Minister
10 Downing Street
London
SW1

3 January 1985

Dear Prime Minister

SCRUTINY OF ADMINISTRATIVE AND LEGISLATIVE BURDENS

Many thanks for your letter of ~~11~~ December.

I am pleased that you have extended the deadline for comments on general issues relevant to the reduction of regulation. You will appreciate that, given the intervention of the Christmas holiday, we will be unable to consult our members in much more depth than we have already done, but the extension does give us a chance to present our draft submission to the next meeting of our Council on 16 January, for their formal approval. I will ensure that their comments are passed on to the Scrutiny Team and Mr Trippier before 18 January.

However, given the Team's tight timetable, I thought they would like to have our views before then and I have therefore already sent our draft submission to the Team leader on the understanding that is is not yet approved. I enclose a copy for your information.

May I reiterate our interest in this initiative and our willingness to help further. I look forward to learning how this initial stage is to be followed up.

I am copying this letter and the enclosure to David Trippier.

Yours sincerely

Terry Beckett.

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SUBMISSION BY THE CBI TO THE GOVERNMENT

SCRUTINY OF ADMINISTRATIVE AND LEGISLATIVE BURDENS

GENERAL POINTS

INTRODUCTION

1 The CBI has been invited to submit comments to the Government appointed Team carrying out a scrutiny of the adminstrative and legislative burdens imposed on business by government.

2 We have consulted our members as widely as possible in the time available; a list of Standing Committees and Regional Councils who have commented is at Annex 1.

3 A number of detailed comments and recommendations for change have been made in most of the subject areas covered by the scrutiny. These have been passed separately to the relevant members of the Team, and are appended here in Annexes 2 - 8.

4 The main purpose of this paper is to identify more general points which have arisen and which are applicable to regulation across the board. These are divided into three sections - the construction of regulation (paras 6 - 16); its enforcement (paras 17-22) and the future control of its impact on business (paras 23-38).

5 This is an enormous subject. We welcome the "Task Force" approach of the initial scrutiny as an effective means of promoting rapid action. But the short time allowed for the Team to report has necessarily restricted the CBI's input insofar as effective consultation on such detailed issues takes considerable time. We very much hope that further work will be done on this subject in the New Year, to which the CBI and sectoral Trade Associations will be able to contribute.

THE CONSTRUCTION OF REGULATION

6 In examining existing legislation a number of points have been raised which are common to all policy areas. These can be summarised under four headings, which we recommend that the Government should use as guidelines when any new domestic legislation or administrative requirement which will affect business is being prepared in future, or when proposed legislation from Europe is being evaluated.

Consultation

7 When a proposed piece of legislation is expected to have a significant impact on business behaviour, it is essential that those parts of business who are to be most affected by it are thoroughly consulted at an early stage during its preparation.

8 Not only will this help to identify, and perhaps reduce, the burden of compliance, but it will greatly increase the chances of the objectives of the legislation being achieved, as it will enable impractical and unenforceable proposals to be screened out.

Comprehensibility

9 It is appreciated that legal requirements sometimes dictate that legislation is couched in highly technical terms, but we do not believe that in many cases this is an adequate explanation of the incomprehensible drafting encountered. It is importnat that legislation and administrative requirements are drafted in as understandable a way as possible, and are accompanied be clear, simple guidance notes, enabling firms to understand easily what they are required to do, without having to call in legal experts.

10 Such guidance notes will reduce the costs of compliance both for small firms, who often have to purchase specialist advice from outside, and large multi-operation firms, who have to explain the implications of new regulation to a large number of managers and supervisors.

11 A similar point can be made with respect to requests by Government of business for information, whether to collect statistics or in connection with applications for Government aid.

12 Forms must be simple, unambiguous and preferably request information in a form which the business will have readily at hand for its own management purposes. Not only does this help save time for the business, it also reduces officials' time in following up incorrectly completed returns.

13 We would give as an example the simplification of the application forms for Regional Development Grants in 1981, which cut costs and improved efficiency without, to our knowledge, any noticeable increase in fraudulent grant claims.

Consolidation

14 The piecemeal development of regulation, the three tier system of government (local, national, European) and, within each tier, the division of policy responsibilities amongst several departments leaves considerable scope for overlap, duplication and inconsistency.

15 To quote just one example, a new building will be subject to Building Regulations (DoE) Fire Regulations (Home Office) and Health and Safety Regulations (Home Office and D Em) all of which may make different, and in some cases conflicting, demands. This leads to confusion and wasted time for both business and the officials concerned.

16 Whenever a new piece of regulation affecting business is being considered, adequate attention must be paid to existing regulation:

- in the same policy area, and at the same level of government;

- in the same policy area but at a different level of government;

- in other policy areas which overlap and which may be under the control of a different department or even level of government.

ENFORCEMENT

Two general points can be made here:

Consistency

17 Consistency in the interpretation of regulation, in the attitudes and approach of officials and in the standards set is vital, over time, across different geographical areas and, whilst there remain problems of overlap, across different policy areas and levels of government.

18 Whilst flexibility in interpretation can sometimes be to a company's advantage, on the whole it leads to confusion, uncertainty and wasted resources. This is particularly true for businesses which have operations in several different parts of the country where, to take just one example, the enforcement of Trading Standards and Consumer Protection Law can differ markedly from authority to authority.

19 Those who have responsibility for the enforcement of regulations should receive comprehensive and periodic training on the nature and scope of the powers and functions assigned to them.

Attitude

20 The attitude of officials is something which may be difficult to influence, but the assumption that the company is "guilty until proved innocent", which has been encountered most frequently in the Taxation and Customs and Excise field, is highly resented.

21 Similarly in the planning field, the initial presumption often seems to business to be against the proposed development, although this is not universally so.

22 An attitude of helpfullness towards business, and tolerance of genuine errors with the necessary corollary of very high penalties for conscious fraud, should be vigorously encouraged. One way of facilitating this may be for officials of Departments which have major regulatory functions to spend some time - say, one day a month during a training period - with companies who are willing to demonstrate the impact of legislation on their business. We know of companies which have come to such an arrangement with officials which has proved beneficial to both parties.

CONTROL OF THE BURDEN

23 Whilst the construction and enforcement of regulation would be improved, with consequent reductions in compliance costs, if the proposals in paras 7-22 were adopted, more changes are needed if the burden of regulation is to be kept continually under control.

A limit on the amount of regulation

24 Many companies, whilst finding it difficult to pin point particular legislation or administrative requirements which are unduly burdensome, feel that it is the totality of regulation which is the problem and in particular the apparently rapid increase in that total, not least because of new law emanating from Europe.

25 A limit should be placed on the amount of new regulation affecting business which can be introduced in any year. Apart from giving business a chance to adapt to new requirements, a control of the flow is particularly important given the desirability of consulting business when the regulation is being prepared (paras 7,8). There is clearly a limit to the amount of time business can devote to such an activity.

26 The maximum amount of new regulation permitted per year and the means of controlling it, bearing in mind that both primary legislation and statutory instruments issued by individual Ministers will need to be taken into account, should be the subject of discussion between the Government and business representatives.

Stability

27 The frequency with which the demands made on employers by government are altered of itself imposes a considerable administrative and financial burden and can disrupt employers' established procedures. No change should be introduced unless the advantages clearly outweigh the inevitable disruption which will follow.

Impact Statements

28 At present any new legislation is required to contain a statement of its likely effect on public sector manpower. Similarly, new legislation should be required to include a statement of the likely costs to business of complying with it.

29 It is recognised that the estimation of compliance costs is not an exact science. Nevertheless, there is sufficient experience in other countries (notably the USA) to suggest that at least estimates of orders of magnitude can be achieved. And the need to make some attempt at estimating costs will encourage the legislators to give thorough consideration to the impact of their proposals on business.

30 New legislation should also be required to show, as far as possible, what other legislation it overlaps with. Again, the discipline of preparing such a statement will be useful in encouraging legislators to give full consideration to the need and scope for consolidation (see paras 14-16).

Sunset Provision

31 Legislation can rapidly become outdated as the circumstances it is intended to influence change, or new factors are introduced. Sometimes experience of operation shows that it does not achieve the objectives it was intended to, or that the costs of complying with it are much greater than originally envisaged.

32 Whenever a new piece of legislation which will affect business is introduced, a time period should be specified after which the impact on business, in the light of the success or otherwise with which the objective of the legislation is being achieved must be reviewed, with a view to modification of the legislation if it is judged that the disbenefits are no longer outweighed by the benefits.

Parliamentary Committee

33 The drafting of legislation, the preparation of impact statements, and reviews, are necessarily made by expert officials under the guidance of specialist departmental ministers.

34 There is a strong case for a separate, all-party Parliamentary Committee of generalists, with a "watchdog" role. As far as new legislation is concerned they would need to satisfy themselves that the guidelines of consultation, comprehensibility and consolidation had been satisfactorily followed; that adequate impact statements had been drawn up and that the maximum limit on new legislation had not been breached.

35 If 'sunset provision' were introduced, the Parliamentary Committee would consider the results of the reviews and make recommendations to Parliament for change, and they would be empowered to institute examination of the impact on business of any area of existing legislation, taking external evidence as necessary and reporting back to Parliament in a similar fashion to current select committees.

36 It is for consideration whether the committee should tackle its survey of existing legislation on an ad hoc basis, or whether it should institute a regular programme of review in each department, reporting back to the committee on a regular basis.

37 The committee should prepare and publish an annual report to Parliament.

European Commissioner

38 Throughout our consultation exercise the amount and burden of EEC legislation has been frequently raised. It is recommended that the scrutiny of the effects of such legislation on business, both when it is being prepared and after it has been in operation for some time, should become a responsibility of one of the senior Commissioners - most obviously the Industrial Commissioner - possibly supported from ouside the Commission by the EEC Court of Audit.

39 It can also be argued that the Commission too often looks to harmonisation of laws, when they might instead promote an exchange of information on existing legislation in the Member states, to see whether countries which have no law, or only a rudimentary one, in the area concerned, might learn from those with more advanced legislation.

RECOMMENDATIONS

40 We recommend to Government that the propsals put forward in paragraphs 7 -39 are adopted.

41 Clearly this cannot be done overnight; it is therefore vital that the study of the impact of regulation on business which has been started with the present scrutiny continues to be pursued with vigour, and that business is given futher opportunities to contribute to it.

ED50QSFPB36L.

SUBMISSION BY THE CBI TO THE GOVERNMENT

SCRUTINY OF ADMINISTRATIVE AND

LEGISLATIVE BURDENS

ANNEXES

Annex 1: Committees consulted on administrative and legislative burdens

Production Committee
Marketing and Consumer Affairs Committee
Contracts Panel
Companies Committee
Company Law Panel
Private Members' Bills Panel
Industrial Property Liaison Group
Commercial Law Panel
Competition Law Panel
Health and Safety Policy
Fire Protection and Insurance Panel
Employment Policy
Equal Rights Panel
Industrial Relations and Wages and Conditions Committee
Industrial Relations sub-Committee
Environmental and Technical Legislation Committee
Minerals Committee
Land-Use Panel
Genetic Engineering Working Party
Taxation Committee
Consultative Group on Taxation
Statistics Working Party
Director General's Group of Employers Organisations and Trade Associations
Smaller Firms Council
Regional Councils in all 13 regions of Great Britain.

Annexes 2 - 8: Comments on Regulation in Specific Areas

2. Company Law; Consumer Law; Data Protection

3. Employment Legislation

4. Planning and Evironmental Matters

5. Taxation: Inland Revenue and Customs and Exercise

6. Customs and Excise: Trade Issues

7. Standards; Weights and Measures

8. Statistics

ANNEX 2: COMPANY LAW, CONSUMER LAW, DATA PROTECTION

COMPANY LAW

Dormant Subsidiary Companies

There are two areas which, with advantage, could be simplified.

Accounts

As subsidiaries of a PLC dormant companies have to produce and file annually a Directors' Report and Annual Accounts - albeit no longer requiring auditing.

a For a company which is wholly dormant it is suggested that it would be sufficient if, with the Annual Return, the Directors made a statement that:

i the company was dormant within the meaning of Sec 12 of the CA '76;

ii that there was no change in the last filed balance sheet "as at .....";

iii the company regarded the PLC as its ultimate holding company.

b Where a company is financially dormant but trades under an agency arrangement with another company (do all, take nothing) and this fact is recorded in the Directors' Report, then one could make a case for filing only a certificate as in (a) above. However, it is not known how many, if any, companies have this concept of "trading" which is peculiar to one of our respondent members.

If such companies were only to file a certificate as in (a) above, then if they move from being wholly dormant ((i) above) to active trading or trading under an agency agreement they would, once again, have to file a Report and Accounts annnually - audited in the former case.

Annual Returns

A considerable amount of detail concerning a company's capital is repeated each year (shares issued for cash, other than in cash, etc) and in a large number of cases, probably all, in the case of wholly owned subsidiary companies, it will not change.

There is a case, therefore, for a simplified Annual Return.

a One view is that it should state, perhaps, the authorised and issued capital only with a note that there has been no change in the capital details since the last "full" Annual Return "as at ....." - which might be every five years (for example) or only when there is a change in the capital detail. Other details required by the Annual Return would continue to be shown.

b This idea could be refined futher by filing an Annual Return which certified that there had been no changes in any of the detail since that given in "the Annual Return as at .....". Again, the period between full Annual Returns could be, say, five years. (This would probably be acceptable to the Registrar, as such a period could easily be covered by the currency of the micro-fiche record kept for public inspection (at present approximately three years for Annual Return and Report and Accounts.)

c Could there be greater recognition in company legislation of the concept of groups of companies? For example, could wholly-owned subsidiaries be relieved of requirements to submit annual and other returns to the Registrar of Companies, perhaps with a proviso that such information as is now filed with the Registrar of Companies, is to be available for public inspection at the registered office of the holding company, with penalties for non-compliance.

d Similarly, could holding companies themselves be required to file an Annual Return and no longer have the burden of filing details of changes in Directors, other Directorships, again with a similar provision about public inspection?

Liquidation

This process is frequently hindered by the difficulty in providing Taxation Departments with certain basic historic financial and share capital information. On other occasions Taxation request that a dormant company be kept because of the possibility of using Capital Gains Tax losses some time in the future, or because an actual capital gains payment would result from liquidation.

It would be of great assistance to all groups of companies if there were company law and taxation legislation to allow a parent company to assume the liabilities and assets of its subsidiary - either on liquidation of the subsidiary or by merging the subsidiary into the parent as can be done in Canada under the Canada Business Corporations Act - Sec 175 et seq.

Loans/Quasi Loans to Directors - Disclosure in the Accounts

S50(2) and (2A) of the CA 1980 permit small loans/quasi loans to Directors up to £2,500 and £1,000 respectively.

S54 and S55 require details of such loans/quasi loans to be disclosed in Notes to the Accounts, together with the names of the Directors concerned.

It is suggested that for such relatively small amounts disclosure in the Notes to the Accounts should not be required.

1981 Companies Act

The requirement to draw up and prepare accounts for members is onerous and unnecessary when the only members of a company are its directors. The disclosure requirements vis-a-vis accounts are especially costly and onerous for small businesses.

1980 Companies Act Section 3 and Section 4

Requires a company to obtain a trading certificate. Is this necessary if it submits both a memorandum and articles to be lodged at Companies House? Connected with this are the conditions which have to be fulfilled before a trading certificate is granted. By the 1948 Companies Act S109, the capital requirement which had to be fulfilled was in the nature of a duty for directors of the company. By the 1980 Companies Act Section 4(2) this requirement becomes statutory.

Companies Act 1948 S209 and related Sections

This area has caused considerable criticism. In straightforward mergers by acquisition of shares it is untidy and unsatisfactory that so many different methods should be available, each with different safeguards. Secondly, that in relation to all types of reconstructions and mergers the present safeguards are not always enough. The need for special majorities is inadequate protection since those in control can in practice force their will on a minority. The proxy voting system places a weapon in the hands of the controllers which is so potent that its force is hardly blunted by the special provisions for disclosure. Even the right to contract out, conferred on dissenting members in reconstructions under Section 287, is of dubious value because of the practical difficulties in proving the true value of their shares. Finally, the protection on which the greatest store has been set - the discretion of the court, has not always proved effective, though there are some signs recently of a greater readiness to intervene. For reluctance to do so the judges cannot fairly be blamed; the truth is that our court procedure is ill-fitted for enabling them properly to pass judgment on the economic merits of schemes and to make the valuations and accounting investigations necessary before they can do so. Hence they are naturally reluctant to substitute their opinions for those reached by large majorities of the members. The most they can do is to ensure that the prescribed formalities have been strictly observed and that decisions have been reached after full and fair disclosure. They are also astute to pick on some flaw in the procedure, if, notwithstanding the vote, they have serious doubts about the fairness of any scheme, This, and the scrutiny to which reconstructions are subjected by the professional advisers, who will have to support them in court, are very real safeguards.

The difficulty, however, is that the courts and counsel are primarily concerned with the legal rights of the parties. Provided these rights are not infringed it is difficult for them to intervene effectively, however inequitable the results may be. It is this which has resulted in the undoubted hardship in some cases. If unfairness is always to be prevented, the role of the courts needs to be replaced, better still, supplemented by an administrative agency similar to a Department of Trade Inspector or a Companies' "Ombudsman". In recognition of this the Scottish courts make a practice of referring schemes to a reporter (generally he will be a chartered accountant or solicitor) whose report they consider before confirming. This practice may account for the fact that the intervention of the Scottish courts seems to have been somewhat more effective than that of the English. In the case of mergers and take-overs the City has established the Panel to Police the Code, but the sanctions available to the Panel are limited and, in any case, its role is to see that the rules are observed, not that the terms of the scheme are fair. In USA, under Chapter X of their Federal Bankruptcy Act, an administrative agency - the Securities and Exchange Commission - acts in reconstructions as impartial representative of investors and expert adviser of the courts. It is arguable that some such solution should be attempted in England.

The vast majority of companies are not controlled by dishonest people and most schemes are carefully considered and are meant to be fair. The real protection of investors and creditors is the force of public opinion represented by informed criticism in the financial Press, and the improved standards of commercial morality which it has produced. Though the courts may be relaxing their control, there is no doubt that in the last thirty years the general standards of fairness displayed in reconstruction schemes have improved.

Of current interest are the new rules being introduced by the Stock Exchange which, to comply with EEC law, have the force of statute. There is, of course, the usual antipathy towards change which, in due course, will no doubt dissipate. Nevertheless, companies will, from 1 January 1985, face a considerably greater burden of disclosure for rights issues, certain acquisitions etc, which most (including the FT's Lex column) believe will be of limited, if any, value to all but the most demanding and inquisitive investor.

The Audit Requirement for Small Companies

It would appear to be opportune to look again at the need for, and impact of, the statutory audit requirement on small companies.

The Companies Act 1948 required every company incorporated with limited liability to have an audit performed by an independent auditor. Small companies, "exempt private companies", were excused from filing their Accounts and Audit Report, and the auditors did not need to be qualified or independent. The Companies Act 1967 abolished these exemptions.

This paper does not attempt to review all the arguments for and against the audit requirement (though these could be made available). We suggest the following alternatives:

a a statutory examination or review differing in purpose and method from an audit;

b no legal requirement for companies below a certain size;

c shareholders would have the option to vote for the removal of a particular company's audit requirement.

We might ask ourselves whether the problem is really that of the need for an audit for small companies or, rather, why there are so many small limited companies. There would be fewer limited companies requiring audits if:

a the effective tax rights applicable to incorporating and unincorporating entities were the same;

b businessmen had confidence in trading without a corporate framework: a new type of entity such as limited partnership might be appropriate;

c there were simpler means of protecting a corporate name.

Compay registration

The loss of registration of trading titles is regretted, as it is now difficult to control the misuse of company titles by others. Reinstatement would be of benefit.

Specification of Objects

Memorandum of British Companies covers numerous objects which are unnecessary to list given that they are covered by legislative restrictions already. In addition to the Companies Acts themselves, the Prevention of Fraud (Investments) Act 1958, and recent subordinate legislation, and Licensed Dealers (Conduct of Business) Rules 1983 (S1 83/585) provide but a few examples. Although legislation has contributed to good order, it is admitted that in itself it has been powerless to prevent all corporate catastrophes, although many consider that the law will never discipline human ingenuity to the extent of suppressing all malfeasance. In spite of this the Memorandum, some feel, is not the most appropriate means of enabling control of the objects of a company, given that these can be changed quickly at any time by special resolution. It is argued that members can secure better control in pursuit of the objects through a shareholders' agreement on incorporation, rather than by the Memorandum. Other techniques for control might include the endorsement on share certificates of relevant conditions akin to the practice of issuing debentures, and a more widespread and effective use of service agreements for member directors.

More importantly S9(1) of the European Communities Act 1972 has in effect destroyed the ultra vires rule, as any transaction decided on by the directors is deemed to be free from any restriction under the Memorandum, subject to certain qualifications.

The time has come, therefore, to relegate long objects clauses to the past. The introduction of incorporation in short form without a lengthy memorandum would result in great savings of drafting, recording, storage and searching for the DTI and the companies themselves.

General Points

Our members repeatedly made the point that the incomprehensibility of legislation caused companies, even large ones with expert legal staff, to waste time and therefore money. Much effort was also expended in monitoring, understanding and assessing the likely impact of European Commission proposals, many of which were opaque and advanced, without serious justification.

In advancing their various proposals for deregulation, our members felt that companies, in benefitting from the principle of limited liability, were obliged to expect a certain degree of regulation in the wider interest. They therefore thought it unlikely that the Government was trying to initiate a radical reform of company law which would necessitate fundamental and, in the short term, costly changes. Many of the submissions, therefore, are likely only to have a marginal impact on company operation should they be implemented.

CONSUMER LEGISLATION AND ENFORCEMENT

Advertising

The Price Marking (Bargain Offers) Order 1979 and the Trade Descriptions Act 1968, especially S11, control the method of advertising offers and prices. The Bargain Offers Order originates from the recommendations made by the Director General of Fair Trading under S2(3) of the Fair Trading Act 1973, proposing a ban on a wide range of "bargain offer claims" which may mislead or confuse consumers. The Order was subsequently made under S4(3) of the Prices Act 1974 and has to be read in conjunction with S11 of the Trade Descriptions Act 1968 which has different and additional controls on pricing.

(a) Impact

The Bargain Offers Order is wide in scope but obscure; it is impossible for honest traders to know if they are complying with the law unless they keep to a narrow band of possible advertisements. Considerable time and trouble has to be taken to give advice as to what is permitted and even then it cannot be authoritative.

Furthermore under the Trade Descriptions Act 1968 there is discrimination against a retailer who gives additional price information to customers on barker cards/channel tickets in addition to pricing individual items by putting him at a greater risk of breaching the above legislation.

(b) Recommendations

(i) That the Bargain Offers Order be revoked. If any further protection is necessary, it should be incorporated into the revision of S11 of the Trade Descriptions Act 1968.

(ii) That the defences under the Trade Descriptions Act be brought up to date, as they have been in the case of Weights and Measures and Consumer Safety legislation where there is a single limbed defence of "all reasonable precautions" and "due diligence". An honest trader should be able to plead honest mistake.

Repricing of Food

The Food (Prohibition of Repricing) Order 1978 made under S2 of the Prices Act 1974 prohibits the repricing upwards of any food items which have been displayed for sale marked with a price.

(a) Impact

It is an unwarranted restriction on retailers who need to respond to market forces and particularly those retailers who put prices on the goods on display. It causes additional work in running old stock out and in checking that old stock on display has not been repriced upwards.

(b) Recommendations

The Order should be revoked.

Weights and Measures

The Weights and Measures Act 1963-79 together with over 100 statutory instruments control the sale of goods by weight or measure and the weighing and measuring equipment used.

(a) Impact

Although not controversial, the provisions are complex to administer. For example; packs packed to a predetermined quantity are covered by the average weight system of control whereas packs packed to random quantities are still controlled by the minimum weight system of control.

Furthermore metrication has not yet been completed and this causes confusion amongst customers and leads to the possibility of mistakes in labelling and pricing.

(b) Recommendations

(i) That the average weight system which only applies to items packed to a pre-determined quantity should also apply to catchweights (that is to items packed to random quantities eg, bacon and cheese) as modern packaging techniques are so controlled that there is no reason why an average weights system should not be applicable to them.

(ii) The metrication process should be completed urgently including its applicability to catchweights. At present, for instance, jam, marmalade, molasses, syrup and treacle can only be packed in prescribed imperial units, whereas rice, milk, tea and coffee can be packed in either imperial or metric prescribed units and salt, flour and sugar can only be packed in metric units.

Weekday and Sunday Trading

Under the Shops Act, there are constraints on hours of opening branches both during the week and on Sunday.

(a) Impact

Weekday late opening prohibitions caused problems with some local authorities and there is variable enforcement of the prohibition.

Sunday trading prohibition has caused some stores to be prosecuted and injunctions have been granted to prevent repetition of Sunday opening despite the fact that the law had not been consistently applied to competitors.

(b) Recommendation

That the Auld Report be implemented as soon as possible as it has increased the variability of enforcement of the existing legislation and is putting both traders and Local Authorities under considerable pressure.

Enforcement of Trading Legislation

There is variability of enforcement and defences under the Weights and Measures, the Consumer Safety, the Trade Descriptions and the Food and Drugs legislation. This cause differences in meeting the legislative requirements and has a capricious effect on trading.

(a) Impact

Although County Councils and London Boroughs are designated, for example, as Food and Drugs authorities, permissive powers are conferred on District Councils to take proceedings in respect of extraneous matters on food and County Councils are able to enter into agency agreements with District Councils to enforce the Acts on their behalf. This leads to fragmentation of enforcment and adds to the problems of companies.

The Trade Descriptions Act 1968 is frequently used by prosecuting authorities instead of the Food Act 1984 and the Weights and Measures Act 1963-79. The Trade Descriptions Act 1968 allows trial on indictment and prosecutions under this Act appear to be more important, attract more publicity and give Local Authorities more powers.

Because the Local Authority can choose under which Act to prosecute, unfortunate results come about. For instance; the effect of the Pears Astral Cream case which was brought under the Trade Descriptions Act instead of the Weights and Measures Act, has caused the Local Authority to question use of double skinned jars for "j" cosmetics and pressure is being brought to bear to change containers.

Under the Consumer Safety and Weights and Measures legislation, there is a single limbed defence respectively of "due diligence" and the average weights system and tolerances which reduces the "one off" risk of prosecution. Under the Trade Descriptions Act addtionally a third party has to be named and this has resulted in employees having to give evidence in court on behalf of the prosecution. Generally under the Trade Descriptions Act a mis-description has to be false to a "material degree". Under the Food Act, in order to establish a defence, the third party has not only to be named but to be prosecuted at the instigation of the accused. This is an even more counterproductive requirement of that defence. In the case of the Food Act a contravention has to be to the "prejudice of the purchaser". All these differences between the Acts cause difficulties and variability in their enforcement.

A trader having to involve his employee in defending himself by either naming them or prosecuting them damages good industrial relations in that employees respectively have to give evidence against the employer in court or run the risk of a criminal conviction.

(b) Recommendations

(i) That a central authority be given the responsibility of coordinating proceedings for any trading offence committed by an undertaking which trades in more than one enforcement area.

(ii) That a single limbed defence of "due diligence" and "all reasonable precautions" be provided for this type of legislation. Furthermore, an honest trader should be able to plead an "honest mistake".

(iii) In some of the Acts above, the law does not take into account contraventions which fall outside the tolerance of "material degree", "average weights system", or "to the prejudice of the purchaser". It is recommended that in mis-pricing offences there should be a defence of an "inconsiderable amount" or an "inconsiderable number being wrong" in the display.

(iv) In the case of Food Act contravention it is recommended that the courts should have regard to the quality of other goods of the same kind on offer at the same time unless the complainant is one involving a foreign object or, for instance, mould in product.

(v) The Trade Descriptions Act 1968 should be amended so that offences also capable of being brought under the Weights and Measures Act or Food Act may not be taken under the Trade Descriptions Act. If the Pears case had been taken under the Weights and Measures Act, a different finding is sure to have resulted as a truthful indication of the contents would have been a good defence.

Retailing Licences

A modern retail shop if it sells a variety of products requires a multiplicity of licences from separate authorites who separately enforce the restrictions imposed by the licences. In many instances there is little or no follow up by Local Authorities to see if the conditions of the licence are being observed.

(a) Impact

The following licences are required for a typical groceries supermarket:-

	Licence	Frequency	Obtained from
1	Ice Cream	Required only once	Local Environmental Health Authority
2	Shellfish	Required only once	" " "
3	Milk	Required every 5th year	" " "
4	Game	Annually but cannot be held by liquor licensee. The licence is in two parts, the Local Authority game licence and the Excise licence to deal in game	Different Local Authorities (Env. Health, Trading Standards, Town Clerk etc)
5	Petroleum	Annual or every two years	Local Fire Brigades or Trading Standards Authorities
6	Radio Communication	Annual	Home Office
7	Fire Certificate	Certifcation only once	Local Fire Brigade
8	Shops Registration	Registration and regular inspection under Offices Shops and Railway Premises Act	Local Enviromental Health Authority

ii) Liquor Licensing: Each branch selling liquor requires a liquor license held by named individuals (usually the Branch Manager and the Licensing Manager) and this gives rise to considerable administration when the named individuals move and the licence needs to be transferred.

b) Recommendation

(i) That a game licence should be abolished.

(ii) That a food shop should simply be registered as such with the Local Authority so that by such notification it can be subject to inspection but should not need the separate licences at present required.

(iii) That a company with more than one outlet selling liquor could be granted a company liquor licence which enables it to nominate the branch manager for the time being as a nominated licence holder. On change of managers the company would notify the magistrates of the new nominee without the necessity of appearance in court unless there is a formal objection.

(iv) That liquor licences should be renewable every five years instead of annually.

EEC

Many of the proposals of the European Commission on consumer protection are unwelcome and should be resisted unless the policies and legislation which are advanced fit in with normal UK trading patterns. Changes in the law of themselves involve compliance costs and amendment of, or addition to, UK consumer protection legislation should only be accepted if the aims of policy would be met at lower cost or there would be a clear gain through removal of obstacles to the free movement of goods between Member States.

DATA PROTECTION

Universal Registration

The CBI has always maintained that registration across the board, subject only to certain very limited exemptions, places an unnecessary burden on business, particularly on the smaller company or firm. The payroll and accounting exemption was intended to relieve some smaller firms of the necessity to register but will in practice probably benefit very few businesses. There is thus considerable scope for removing the registration requirements from other areas of business activity.

One possible area, for example, where the increasingly automated office is rapidly bringing virtually all personal data dealt with by companies within the Act's scope, would be "internal office administration". This would at least put outside the Act's scope personal data appearing in office "in-trays", more and more of which are now in computerised form and other material necessary purely for the internal operation of the company.

Power of Secretary of State to Make Exemption

The CBI has at various times also proposed that a power be given to the Home Secretary to exempt certain categories of data or operation from the scope of the Act. This power was, we argued, essential to keep pace with modern technology and the increasingly automated office illustrated above. For example, managers and salesmen are increasingly using personal computers as personal notebooks - the implications not just of registration but of the subject access and non-disclosure provisions of the Act for such uses are horrendous.

Refining of Existing Exemptions

Subsection 1(18) of the Act exempts word processing operations when performed only for text preparation purposes. It would be possible to widen this exemption so that it embraced the other purposes for which word processors are normally used, such as circulating and filing. No doubt other examples could be found.

Interpretation of the Act by the Registrar

There is, of course, considerable scope for the Registrar to interpret the Act in ways which would ease the burden on business. These might more appropriatly be taken up with the Registrar himself, but the sort of thing we have in mind might relate to the registration requirements; for example, the data user is obliged to provide one or more addresses for access by the data subject. Organisations with many branches, such as retail chains or banks, would obviously find it easier to receive requests at head office or some other central location than at each and every branch. A suitable ruling by the Registrar here could save companies considerable time and cost in dealing with request for subject access.

Annex 3: Employment Legislation

SCRUTINY OF ADMINISTRATIVE AND LEGISLATIVE BURDENS

EMPLOYMENT LEGISLATION

1 The CBI was asked to contribute to the Government's "deregulation" exercise in mid-October. At that stage, the CBI had recently undertaken extensive consultation with its members to ascertain employers' attitudes on key aspects of employment, including the impact of employment protection legislation on job opportunities. This consultative exercise was supplemented by a detailed survey conducted for the CBI by Gallup. This addressed issues such as employers' attitudes to patterns of work, industrial relations and possible barriers to employment. Since then, the CBI has consulted its members as extensively as possible within the time available for comment on the present scrutiny of the Task Force, with specific reference to the administrative and legislative burdens imposed on industry in the field of employment by central and local government.

2 In the light of these consultations the CBI believes that there is some scope for alleviating the administrative and legislative burden imposed on employers. The areas in which the CBI believes progress could be made and which should therefore form part of the present scrutiny are identified below.

A EMPLOYMENT PROTECTION LEGISLATION

3 In the last few years, concern has consistently been expressed by CBI members about the sheer weight of the legislative and regulatory obligations imposed on employers. Only occasionally are specific provisions singled out as being particularly onerous. It is the mass of legislative and administrative provisions which employers generally find difficult to contend with and costly to implement. One of the principal problems is that of identifying the precise obligations which apply in different circumstances. This leads to the conclusion that irrespective of whether particular provisions are repealed or their impact lessened, anything which can be done to simplify the administrative and legislative burdens for employers will of itself be to industry's advantage. For example, the consolidation of the existing legislative provisions on both individual and collective rights would represent a significant step in the right direction.

4 Although the problems of compliance with the legislation are more pronounced for smaller firms, where financial and administrative resources are necessarily limited, they are by no means confined to them. Financial and administrative burdens can have just as much impact on large firms, particularly if they operate on the basis of de-centralised, autonomous units.

i Unfair Dismissal

5 Much of the concern expressed by CBI members over the unfair dismissal provisions of legislation relates not so much to the substance of the legislative provisions as to the costs which result from their associated procedures. These are considered in Section (v) below.

6 There is no clear support among CBI members for radical changes in the legislative provisions relating to unfair dismissal. Support for change is, however, felt most strongly among smaller firms. This reflects the finding of the recent survey conducted for the CBI by Gallup. It found that although there was general uncertainty about the employment implications of the abolition or reduction of individual employment rights, 17% of the smaller firms covered by the survey mentioned existing unfair dismissal arrangements as a possible impediment to higher employment.

7 It is interesting to note that in that survey, "smaller firms" were defined as those firms employing under 200 employees. This figure is radically different from that contained in current legislation. For example, the unfair dismissal provisions which extend the qualifying period of service to two years is for firms with 20 or fewer employees. This suggests that either the present threshold of 20 should be increased to cover a wider range of "smaller" firms where the relaxation will be more directly felt, or alternatively , possibly preferably, the requisite qualifying period of service should be increased generally. This would have the added advantage of matching the period of service required with entitlement to redundancy payments, and would thus help to simplify the provisions overall.

ii Equal Opportunities

8 There is considerable concern among CBI members about the increasing intervention by local authorities in companies employment practices and procedures. Increasingly companies are required, as a condition of inclusion or retention on an authority's approved list of contractors, to complete a detailed and searching questionnaire about their companies' policies and practices on equal opportunities, health and safety as well as a number of other matters. This imposes an unnecessary financial and administrative burden on employers. Such activities on the part of local authorities usurp and duplicate the function and responsibility exercised by other statutory bodies.

9 The CBI has always believed that commercial contracts should be awarded purely on commercial considerations without reference to extraneous factors. Commercial contracts should certainly not be used as vehicles for achieving social objectives. It is, therefore, our belief that measures should be introduced to curtail the power of local authorities to impose such requirements on contractors and to prevent the spread of such practices.

10 Some concern has also been expressed about the activities of the Equal Opportunities Commission and the Commission for Racial Equality. In particular, concern has been expressed about the level of financial and other assistance which the Commissions give to individuals in connection with legal proceedings brought under the Sex Discrimination and Race Relations Acts. In some instances, cases are pursued to the higher appellate courts in circumstances where it is likely that proceedings would not have been instituted at all without backing by the Commissions. Individual complainant's costs are, in effect, funded from the public purse. For the employer, however, the costs in terms of time and money associated with such "test" cases can be considerable.

11 This clearly indicates that the operation of the two Commissions should be subject to close scrutiny. However, more specifically, measures should be introduced to limit the financial support which the Commissions can give

to individual complainants. Alternatively, the Commissions should be required to pay the costs incurred by an employer who successfully defends a case sponsored by them.

iii Maternity and Redundancy Payments

12 A number of CBI members have expressed concern about the responsibility of making maternity payments to employees which the employer is then able to recover from the Maternity Pay Fund. Individual respondents have put forward various suggestions for altering the present system which would, to a greater or lesser extent, alleviate the burden imposed on employers.

13 It has been suggested, for example, that the responsibility for making maternity payments should be transferred altogether from the employer to the State. An alternative proposal is that employers should be able to recover maternity payments to employees by making appropriate deductions from their National Insurance contributions in exactly the same way as for Statutory Sick Pay. The present system requires employers to, for example, pay to the Inland Revenue their share of National Insurance contributions on the gross amount of the maternity payment due which the employer is then able to recover in full from the Fund. The view has been expressed that this introduces an unnecessary and time-consuming administrative step which should be eliminated.

14 In any case, the paperwork involved in obtaining both maternity and redundancy rebates should be carefully examined to ensure that only relevant information is sought. The CBI recognises that some progress has already been made in this area and welcomes the simpler procedures recently introduced for employers claiming redundancy rebates. Under the new procedures, employers no longer have to provide details of rebate claims in advance. Efforts should, however, continue to be made to identify areas in which the paperwork involved for employers can be reduced.

iv Guarantee Payments

15 The right to a statutory guarantee payment should be excluded where workers are laid off as the result of extraneous industrial action. It is inequitable that employers should be required by statute to make guarantee payments where normal working is disrupted by industrial action over which they have no control and the outcome of which they cannot influence.

v Industrial Tribunal Procedures

16 There is increasing concern among CBI members about the growth of legalism in industrial tribunal proceedings. The original intention that industrial tribunals should provide a forum for the speedy, informal and inexpensive resolution of grievances arising in the course of employment has not been fulfilled in practice. The possibility of legal proceedings against the employer has become a very real threat because of the costs and delays associated with industrial tribunals. The changes that need to be considered are detailed and thus probably not within the immediate purview of the Task Force. However, the CBI is in no doubt that there should be a comprehensive review of the workings of industrial tribunals to ensure that the original objective becomes a reality.

17 In particular, the CBI believes that further measures should be introduced to discourage the pursuit of meritless cases. Some progress has, of course, already been made on this front by the introduction of a pre-hearing assessment stage in industrial tribunal proceedings and the widening of the grounds on which costs may be awarded. These measures could usefully be supplemented by, for example, requiring the applicant to deposit a fee in order to commence proceedings before an industrial tribunal which would be refundable if the case proves successful. Another possibility would be to empower industrial tribunals to dismiss meritless cases at the pre-hearing assessment stage, rather than merely giving a caution as to costs. In addition some members have suggested that proceedings might be more speedily completed, especially where the case is meritless, if the training given to industrial tribunal members emphasised the powers available to them to dispose of cases. In any event, irrespective of the effect on meritless cases, this might help to reduce the time proceedings take which some of our members perceive to have steadily increased over the last few years.

B HEALTH AND SAFETY

i The Duties of the Health and Safety Commission

18 The CBI considers that compliance costs of health and safety legislation should be kept to the lowest level consonant with standards in the workplace that are socially acceptable. This balance can be achieved most expeditiously if the Health and Safety Commission is required to:

- quantify the costs and benefits of all its proposals for Regulations and enforceable controls;
- to identify in advance the scientific, medical and technical evidence on which it relies in assuming such benefits; and
- to propose only those solutions that are shown to be cost-effective in the situation under study.

The CBI recommends therefore that the legislation should be amended to require the HSC when making proposals to set out the evidence of benefit, quantify it so far as practical and quantify too the costs of the proposals to Society as a whole.

ii Workplace Health and Safety

19 Many of the compliance costs imposed on business in the field of health and safety stem from the operation of Section 1(2) of the Health and Safety at Work Act. No serious attempt at de-regulation in this field can be made without grappling with this part of the Act. This subsection reads as follows (CBI stress):

"S.1(2). The provisions of this Part relating to the making of health and safety regulations and the preparation and approval of codes of practice shall in particular have effect with a view to enabling the enactments ... and other instruments ... to be progressively replaced by a system of regulation and approved codes of practice ... designed to maintain or improve the standards of health, safety and welfare...".

20 The CBI strongly recommends the review and amendment of this subsection of the Act in order to permit the HSE to repeal archaic law in for example the areas listed in paragraph 26 below.

21 The reason for the CBI objection to this subsection is its ambiguity in law. It has been interpreted to mean that no section of a statute nor regulation under statute that relates to health or safety can be repealed unless replaced by a requirement of equal weight and standing in law.

22 It has been interpreted to operate without regard to the merits or relevance of the old legal requirement to present day technology, industry or society.

23 It has in effect prevented any deregulation relating to health and safety. No significant regulation or sections of an Act has yet been repealed without replacement: no significant proposal has yet been made by the HSE for repeal without replacement.

24 The result of this interpretation is that the Commission has foisted on it by the relatively deadhand of history a set of out of date priorities and attitudes. The Commission is prevented from choosing these things for itself and is subjected to unnecessary tensions in seeking to reconcile archaic approaches with contemporary needs. It cannot use its own judgement in determining areas of work and stringency of control.

25 For the most part, these tensions lead simply to much waste of the time of officials in attempts to justify either the persistence of outdated systems in new legislation or the abandonment of patently absurd attitudes in potential conflict with Section 1(2). This waste of Government resource should perhaps be of as great concern to Government as to employers: the employers' concern is still greater where the existence of Section 1(2) leads to official proposals for legal controls of excessive stringency that might have suited the past but are inappropriate to the present day.

26 Examples of both types of unnecessary tension and regulation are:

- The revival of the old concept of 'adequacy' to govern the standard of control in the proposed regulations for the control of hazardous substances is a misplaced attempt to repeat the needlessly strict standard of Section 63 of the Factories Act.

- The current proposal for an Approved Code of Practice on Fumigation which though outdated is apparently necessary to replace.

- The current proposals for absolute requirements in the Electricity at Work Regulations.

- The current discussions on licensing of petroleum installations in the Flammable Liquids Regulations.

- The recent discussions on the 'practicable' rather than 'reasonably practicable' requirements in the proposed Control of Asbestos at Work Regulations.

- The recent discussions on the proposals to replace by new Regulations and/or Approved Code the discriminatory legislation that prevents women from working at night.

- The discussions in 1982/3 on the proposals to replace the wholly absurd obligation under the Offices Shops etc Act and numerous other old Acts to post abstracts of the law on noticeboards.

- The virtual abandonment by the HSC of attempts to repeal outdated and unnecessary laws and regulations even though at times they either relate to non-existent industrial activities or are known to impede existing sectors from increasing their competitiveness, eg the Pottery Welfare etc Regulations.

- Protracted discussions on several parts of the two sets of Conveyance of Dangerous Goods by Road Regulations that were required to reproduce the same level of requirements as those under the Petroleum Consolidation Act 1928.

- Protracted discussion on aspects of the Control of Lead Regulations.

- The current proposals for regulations on manual handling of loads by regulations with impracticable and unenforceable absolute duties for employers in an attempt to reflect Section 72 of the Factories Act.

27 Amendment of this subsection is thus needed to clarify first that it relates only to genuine "standards", that is descriptions of good practices or procedures. Secondly, amendment should clarify ways in which repeal is permitted where an extension of scope is proposed even with a potentially less stringent obligation. Thirdly, the amendment should be made to allow repeal of archaic law where it is evidently obsolete and needs no replacement, or replacement only at a lower level and reduced stringency.

iii Enforcement of Health and Safety Legislation

28 CBI members in industry and commerce ask four things of health and safety inspectors from both Health and Safety Executive and local authorities. They are:

- to promote self regulation;

- to be consistent in procedures and standards;

- to eliminate bureaucratic paperwork; and

- to operate a system that encourages rather than merely penalises employers.

Self Regulation

29 The enforcement authorities needlessly increase compliance costs in industry by frequent visits to firms that have acknowledged high standards of health and safety while apparently ignoring others possibly with lower standards. The CBI therefore recommends the Health and Safety Commission and Executive to accelerate and extend their reviews of the role and procedures of the Inspectorates. The aim of these reviews should be to promote self-regulation in firms with good standards, to enable greater attention to be paid to other firms, to target resources to areas of greatest problems, and to improve the advisory capacity of inspectors throughout industry.

Consistency

30 First and last employers ask inspectors to operate one set of standards. Inconsistency in setting levels leads to confusion, uncertainty and very considerable wasteful expense. Many examples of such inconsistency are on the record and HSE is aware of them. Employers also seek consistency in the attitude and approach of inspectors. Statistics show that local authority inspectors issue a far greater number of Improvement and Prohibition Notices as a proportion of their workload than do HSE Inspectors.

31 Industry is already cooperating with HSE, especially through IACs and NIGs in preparing guidance for both employers and inspectors to be applied across the board and harmonise standards of enforcement. More needs to be done on this front. In addition, the CBI recommends that the HSE should be given responsibility for all professional inspection standards and powers to require the local authority inspectorates and HSE to follow one set of procedures and apply one set of standards. Only a transfer of authority of this sort will make the necessary harmonisation possible.

The Paperwork

32 An irritant for employers is the bureaucratic paperwork associated with notification and/or registration procedures for a variety of purposes, fire prevention, building control, health and safety and so on. Commercial, retail, distribution and factory premises should be exempt from notification requirements unless associated with harmful agents or hazardous practices. Even for these workplaces, notification should be simplified. There should be one set of arrangements for all purposes and that should be simple and totally straightforward.

A New Sort of Guidance

33 More and more in recent years the inspectorates have sought to require employers to apply Notes of Guidance, informal codes of practice and British Standards as a means of demonstrating compliance with the general duties of employers under the HSW Act. The Inspectorates have by these means sought to enforce such guidance through the normal processes of enforcement even to the extent of using such guidance as a basis for prosecution in the courts.

34 This usage has a number of undesirable effects. For example, the Guidance has to be framed, often following tripartite discussion, by lawyers in legal language that in the extreme can be handled by court officials. It thus becomes incomprehensible for many managers and workers and loses its practical, down-to-earth approach.

35 Worse still, the Guidance that is often intended by employers to set aims and standards of the very best practice which they should aspire to achieve over a period as knowledge and resources permit, is seen by the inspectorates for immediate enforcement. Guidance that is designed as a training aid becomes a list of offences. The type of Guidance preferred at present by the Inspectorates does not admit the setting of targets. It is seen not as a means of encouraging employers to do better as and when they can, but as a way of penalising employers when they fail to meet the high standards it propounds. Thus Guidance Notes have become a stick whereas employers believe they would be much more helpful and effective as a carrot.

36 The CBI therefore seeks a new approach to Guidance Notes. They should be seen as wholly voluntary for employers and could thus admit the setting of targets, the prescription of best practices to which employers could be encouraged to aim as resources allow.

iv The Regulation of Hazardous Installations

37 This is not a matter of workplace health and safety, but nevertheless one for which the Health and Safety Commission has responsibility, officials of HSE working closely with colleagues in the Department of Employment. It is a matter where manufacturers' costs of compliance are rising steeply with the implementation of a series of new regulations or codes.

38 Operators of hazardous installations have come under strict scrutiny in recent years and been subjected to a series of new planning, environmental and safety controls. These controls already require the notification of hazardous installations, and will require the survey and periodic resurvey of such installations, the preparation of emergency plans on and off site, information to the public about the hazards and in most cases special planning applications and approval. Site operators must now gear their operations in order to comply with this new area of law.

39 The costs to industry and indeed to society of these new obligations are well-documented and considerable. These costs will bear on numerous small as well as large companies handling hazardous substances and will have a significant effect on their future ability to invest and prosper.

40 A number of suggestions have been made that industry should be subjected to additional and even more extensive controls. The purpose of such further requirements would be to build a comprehensive system out of existing arrangements, expanding it into areas and over substances considered hazardous but not previously covered.

41 The CBI urges the Government to allow industry a breathing space in which to put into operation the new legal duties. Industry's desperate need for an opportunity to absorb the new burden of cost must outweigh the public's wish for a tidy parcel of regulations.

C WAGES COUNCILS

42 The CBI wishes to see a considerable amount of deregulation in the area of Wages Councils. However it would prefer substantial reform to the outright abolition of the whole system. There are some areas of business where employers regard Wages Councils as helpful in achieving good industrial relations and in minimising calls on scarce management resources.

43 The package of reforms recommended by the CBI is as follows:

i Wages Councils should be reviewed case by case in consultation with those employers affected to see which councils should be retained, merged, converted to statutory joint industrial councils, or abolished.

ii For those Wages Councils that remain following the review there should be:

a exemption on request for companies with their own collective bargaining arrangements

b restriction of Councils' remit to setting a single adult hourly pay rate, and related youth rates.

44 This approach would not only achieve deregulation in sectors and companies where employers regarded it as helpful, it would completely deregulate non-pay terms and conditions such as hours and holidays and end the complex rulings which currently cause so much unnecessary work.

D SOCIAL SECURITY

i Pensions

45 In its response to the Government's Special Inquiry into Provision for Retirement the CBI recommended that the Inland Revenue Limits on pensions should be abolished, retaining only a limit on employee contributions allowable for tax relief and a limit on permissible tax-free lump sums. The present limits imposed as a condition of tax approval create administrative problems and often penalise early leavers. Employers find difficulty in explaining the logic behind these restrictions. Cost considerations combined with the modest restriction suggested would be sufficient to prevent abuse of the system.

46 Under present regulations members of occupational pension schemes who wish to make additional provision themselves can only do so with full tax relief by making additional voluntary contributions through their main scheme. The CBI has suggested that this requirement should be removed so that employees could administer their own arrangements in addition to, and separately from, their occupational schemes.

47 The regulations relating to contracted out occupational pension schemes have become unnecessarily complex in the relatively short time since the Social Security Pension Act 1975 came into operation, particularly with the passing of the Health and Social Security Act 1984 which prohibits the practice known as "franking".

48 The practice of introducing over-riding legislation will also add to the administrative burden on pension funds and will make it more difficult for employees to fully understand their schemes. The CBI maintain that the rules of schemes should be complete in themselves and should enable scheme members to establish their benefits without the need to refer to several Acts of Parliament.

49 The Social Security Bill which is now before Parliament contains proposals for a Public Deposit Registry of pension schemes analagous to the Companies Registry. This will only add to costs and the regulation of pension funds without improving security in any way.

ii Statutory Sick Pay

50 The statutory sick pay scheme imposed a considerable administrative burden on employers. It will be recalled that in signifying its support for the scheme in principle, the CBI asked that employers should be fully reimbursed for both the direct and indirect costs. Whilst the CBI has welcomed the Chancellor's decision to remove the liability on employers to pay national insurance contributions on SSP, a significant administrative burden remains. Since the implementation of the scheme the CBI has received a number of complaints about the additional costs employers now have to bear. The SSP scheme has been in operation for a relatively short period and changes to the rules, which impose an extra administrative cost on employers should be kept to the minimum.

Annex 4

DE-REGULATION: PLANNING AND ENVIRONMENTAL MATTERS

1. Avoiding the negative approach

Government should reinforce by every means available their advice DoE Circulars 22/80 and 16/84 that an application for permission may be refused only if there are sound and clear-cut reasons for such refusal.

2. Inflexible administration

(a) Building Regulations

Example (i) A disused industrial building was divided into separate premises for small enterprises. The developer erected a brick partition wall to roof height, and was then required, irrespective of the type of enterprise, to provide special fire insulation extending 1½ metres on both sides of each partition wall.

Example (ii) A small (500 sq ft) unit requiring roller shutters for a doorway 10ft x 10ft had to be built with special heavy foundations and steel frame supporting structure on account of theoretical wind hazards.

Example (iii) A planning consent included a consent laying down a maximum noise level at the boundaries of a site: the applicant demonstrated - at considerable expense - that this was less than that made by the fast-flowing stream on his boundary.

(b) High Requirements

On a redeveloped industrial estate, roads may be inordinately costly because required to full highways standard, with footpaths 2 metres wide on both sides, although pedestrians are unlikely.

3. Over-elaborate and costly legislation

(a) Footpath diversions

Procedures are lengthy and onerous. Often a diversion is required in connection with a development for which planning permission is required, but separate permission has subsequently to be sought for the footpath diversion.

We can quote examples where the footpath complication has already effectively delayed developments for more than two years after planning permission - itself not quickly obtained - was granted.

(b) Listed buildings

1/4 million buildings already are listed, and Government's declared ambition is to double this number.

Owners can find the maintenance of listed buildings - often unsuitable for current needs - a heavy burden. Even if consent is given for demolition (as in one case where the listed building was obstructing the redevelopment of a major works), the delay and associated costs are substantial.

(c) Planning controls over hazardous development

See T 353a 84 (attached, Appendix 4.1)

4. Local legislation superimposed on national

Local Authorities habitually seek to extent or amend national legislation. The CBI particularly objects to provisions which:

(1) are more onerous than those of the Fire Precautions Act and the Building Regulations, and which inhibit the development of new warehouses using modern handling techniques. (Examples in several Private Acts and Bills).

(2) Amend national - and sometimes very recent - law. (e.g. Berkshire's clause reducing from 3 days to 1 the notice to be given under Section 22(2) of the Food Act 1984).

(3) Seek powers of prior approval of the financial standing of a purchaser of property concerned in a Section 52 Agreement. (e.g. Oxfordshire Bill Clause 5(i)(f)).

5. Unnecessary and costly EEC controls

See attached at Appendices 4.2, 4.3, 4.4)

(a) letter 21 July 1983 to House of Commons European Legislation Committee;

(b) statement November 1983 to UN Environment Committee;

(c) statement on Transfrontier Shipment of Wastes.

6. Over-hasty Regulations without consultation

(a) Omission of exception for aviation fuel - see letter 28 July 1980 from Departemnt of Transport (attached App 4.5)

(b) Provision for Marine Nature Reserves in Wildlife and Countryside Act before end of consultation re need for MNRs - evidenced by total lack of designating since.

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CBI

Appendix 4.1

T353a 84

PLANNING CONTROL OVER HAZARDOUS DEVELOPMENT (DEPARTMENT OF THE ENVIRONMENT LETTER OF 30 JULY 1984).

CBI Observations

1. We appreciate that the Department is under pressure to close what may be a small loophole in planning control over hazardous development. We believe, however, that proposals for action are premature in the light of the considerable recent increase in the control and advice relating to hazardous installations and in the absence of documented evidence of real problems. In any case the suggestion made in the DoE's letter of 30 July 1984 would not provide, without substantial refinement, a workable solution.

2. The recent additions of control and guidance in this field include:

   - Notification of Installations Handling Hazardous Substances (NIHHS) Regulations 1982;
   - Town and Country Planning General Development (Amendment) Order 1983;
   - Town and Country Planning (Use Classes) (Amendment) Order 1983;
   - DoE Circular 9/84 'Planning Controls over Hazardous Development';
   - EC Directive 82/501/EEC on the Major Accident Hazards of Certain Industrial Activities;
   - Draft HSE Guidance on the Storage of Hazardous Substances.
   - Control of Industrial Major Accident Hazards (CIMAH) Regulations 1984;
   - Notification of Dangerous Occurances Regulations
   - A HSE Guide to the CIMAH Regulations;
   - Classification, Packaging and Labelling of Dangerous Substances 1984;
   - Chemical Industries Association's "Guidelines for Safe Warehousing" 1983;
   - Draft Dangerous Substances (Notification and Marking of Sites Regulations 19

3. With all the reporting and emergency planning mechanisms that these involve it is inconceivable that the local planning authority (LPA) will be unaware of the presence in its area of a hazardous development or of a significant quantity of hazardous material. On the rare occasion that it needs to take

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action in the interests of public safety, it usually has the residual power of revoking or varying the planning permission of the industrial concern. The HSE too has adequate powers of enforcement. Changing the planning regime will offer no extra advantage to people at work or the public in terms of health and safety. What real evidence exists for suggesting it?

4. We urgently need now a period of legislative stability to put all the recent controls properly into operation and to test their effectiveness - not the introduction of further changes.

Notification

5. If possible changes/additions are still envisaged, our first preference would be for premises which are already notified to HSE under NIHHS Regulations also to be notified to the local authority. The controls currently exercised by the Health and Safety Executive should be sufficient in their own right.

Consent

6. The consent procedure envisaged by the Department seems to us to represent a breakaway branch of planning law. It would need careful and complex drafting to avoid problems and ambiguities, in particular -

(a) it would have to be rapid. Swift movement of stock may be crucial to meet a market opportunity. Delays, for example the time taken by a local planning authority to obtain the advice needed to assess the technical merits of providing consent and to act upon it, must be minimal. Provisos to guarantee a speedy system would have to be built into the system. These might include placing an obligation on an LPA to formulate a policy, perhaps documented in local plans, of where such substances may or may not be stored.

(b) Its application must be limited. The legislation must make clear that quantities of scheduled substances below those in the NIHHS schedule are and will remain exempt. The system should not use the - very wide - definitions of the EC directive 82/501/EEC nor be applied to the larger group of substances in the schedule to the CIMAH Regulations. Pipelines should be excluded. A considerable number of hazardous developments already require a specific planning permission - how would these be treated? The permission should be granted for a site rather than a specific building, to avoid fresh applications for transfers between buildings on multi-purpose plants.

(c) It must not be retrospective. If it were it could invite over-zealous LPAs to reconsider planning permission for any existing installation handling hazardous materials. This would not only be unfair to an industrialist who has already committed capital on the basis of the permission granted, but would also create unnecesary uncertainty in the supply and demand of these materials.

(d) It must be applied uniformly by local authorities. Industry must understand and have confidence in the system; and this implies a consistent interpretation, backed by central Government guidance, and proper safeguards for industry such as appeal and compensation arrangements. The system must

Appendix 4.2

Frank W Clark Esq
Clerk to the House of Commons'
European Legislation Committee
46 Parliament Street
LONDON SW1

21 July 1983

Dear Mr Clark,

PROPOSAL FOR A COUNCIL DIRECTIVE ON PROCEDURES FOR HARMONISING THE PROGRAMMES FOR THE REDUCTION AND EVENTUAL ELIMINATION OF POLLUTION CAUSED BY WASTE FROM THE TITANIUM DIOXIDE INDUSTRY (COM(83)189 final, 14 April 1983)

We are pleased to learn that your Committee is taking evidence on the above proposal. In our view the proposal raises important general points of principle and we would ask your Committee to note, in particular, that:

(a) although superficially an environmental measure, it would impart little or no environmental benefit;

(b) it has potential to damage the interests of the European Community as a whole, and

(c) it could harm UK trade in titanium dioxide pigments.

To expand:

(a) Adequate controls, including two specific directives, exist to protect the environment in respect of discharges from the titanium dioxide industry. There is no environmental need for further controls, and the Commission itself provides no such justification in terms of possible harmful effects or inadequacy of current controls. Indeed the proposal frequently refers to prohibition of discharge when elimination of pollution should be the ultimate environmental goal.

(b) High industrial costs (in part to meet existing discharge controls) coupled with a world surplus of capacity in the titanium dioxide industry, have the effect of making operating margins small or indeed non-existent from time to time. Extra costs to the substantial ones already imposed on EEC manufacturers, for example to meet the 1978 EC directive, will inevitably make their products uncompetitive in world markets or result in company losses. Neither consequence is sustainable for long, unless State aid is injected to counter operating losses (which is contrary to UK's current interpretation of the

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'polluter pays' principle). Taken to its logical conclusion, the EEC titanium dioxide industry could lose its markets, inside and outside the Community, with consequential decline in its operations - a situation totally against the well-being of the Common Market.

(c) In addition, the proposed directive aims to equalise costs between industries in the Member States by imposing uniform discharge limits. Since environmental conditions and industrial (labour, transport etc) costs vary so much, between Member States, the effect of equalising on an EEC basis a single parameter is to distort competition by ruling out a country's natural advantage but leaving its disadvantages intact. This is contrary to the intention, in Article 1, to improve the conditions of competition in the industry.

Overall, we consider it imperative that the proposal should be subjected to the fullest cost/benefit appraisal, including an evaluation of the implications for the Community of lost exports and potential imports. This would be consistent with the objectives of the Community's environmental action programme, to integrate the environmental dimension with other policies.

Yours sincerely,

Dr E F Thairs
Secretary
CBI Environmental and Technical Legislation Committee

not be capable of abuse by the whims of local politics.

Even if these problems were adequately resolved, a number of subsidiary questions arise e.g. -

- would the LPA have to keep separate records (registers etc)?

- would the application be of a type requiring notification under Sections 26 and 27 of the 1971 Act because if so another special set of regulations would be required?

- what would be the entitlement to compensation when a consent is refulsed for hazardous materials on premises for which no planning permission is currently required?

We would appreciate the Department's views.

Definition of Development

7. Whilst we agree that it is not appropriate to change at this time the definition of "development" in Section 22 of the 1971 Act, we would be grateful if the Department could explain in more detail why it believes complex provisions would be required to ensure that planning permission were not required each time a hazardous substance was moved into or out of premises. It seems to us that sub-section 3, dealing with the avoidance of doubt, could be extended without undue difficulty, by, for example

"(c) the use of any land or building involves a material change of use of such land or building if any part thereof is used for the processing or storage of hazardous substances of the type and quantities specified in regulations approved by the Secretary of State under the Health and Safety at Work etc Act 1974".

Conclusion

We do not believe another change in the control of hazardous substances is justified at the present time.

Appendix 4.3 : Introductory statement by R I Lindsell (CBI) for UNICE at meeting with EC Commission and Greek Minister (President of EC Council) 1983

UNICE 'ENLARGED' ENVIRONMENT COMMITTEE MEETING, NOVEMBER 1983

Introduction of item on 'Hazardous Waste'

1. UNICE re-affirms its support for sensible controls over hazardous wastes, in particular to ensure that final disposal of unwanted materials takes place

   - as soon as practicable

   - in a suitable place

   - in a safe manner

   - in the most economic, environmentally acceptable way.

   Accordingly it welcomed EEC directives setting up a general system of control over wastes (75/442/EEC) and specific additional controls over toxic and dangerous wastes (78/319/EEC). It maintains that, with minor improvement, the EEC legislative framework is satisfactory with the emphasis rightly placed on ensuring correct final disposal.

2. Variability of wastes makes precise definition and analytical control standards impossible; absence of precision highlights the need for flexibility in the operation of the controls rather than defects in the procedures. Control authorities and producers and handlers of waste already have many years of experience and knowledge to guide them in circumstances where definitions cannot be precise. UNICE is disappointed that several Member States have been dilatory in achieving alignment of their systems with the existing Community framework, often using difficulty of definition as the excuse for inaction. This results in calls for additional Community legislation whereas the true need is for proper implementation and enforcement of what already exists.

3. However, one area where the current system has been shown to be defective is its lack of visibility - its failure to gain the public's confidence that waste is being fully and properly regulated. UNICE therefore accepted the desirability of a further EC proposal to set up a simple notification system whereby waste could be visibly traced from its point of production to its final resting place. It welcomed the raison d'etre of the proposal now under consideration.

4. Unfortunately the proposal which should have been simple, designed to introduce a degree of transparency, has become the vehicle for a range of other issues which, though relevant to waste, are more general in character and should be studied in separate contexts. Insurance, labelling, licensing of contractors etc all fall within this category of superfluous requirements. They are suggested for political reasons for they cannot be supported by evidence in practice of the problems they purport to solve. Danger from hazardous waste is virtually eliminated with proper application and enforcement of existing controls.

Appendix 4.4: Introductory Statement by E F Thairs for UNICE at meeting with President of EC Council, Mme. Bouchardeau, 1984

TRANFRONTIER SHIPMENT OF WASTES

1. In 1975 the European Community introduced a directive on waste and in 1978 supplemented it with a directive specifically on toxic and dangerous wastes. All but Greece and Ireland have ratified the ADR (European Agreement concerning the international carriage of dangerous goods by road). UNICE has supported these measures which provide a reasonably full set of European rules ensuring adequate safety in the transport and disposal of wastes and preserving too the principle of free movement of materials.

2. What we now need is -

   first, full implementation and enforcement of the regulations which exist;

   second, a documentation system so people can see what is going on and that the administrative/legal systems can cope.

   UNICE supports both these aims, and the present EC proposal in so far as it provides a documentation system which should inject a much-needed degree of public confidence into a trade which by and large has been carried out responsibly.

3. We are disappointed by attempts by the EC Commission and by Member States to use the proposal as a vehicle for advancing extra legal provisions (strict liability, insurance etc) over-and-above those needed now. The result is delay and the sort of uncertainty industry doesn't need. We hope that these surplus provisions can be removed - maybe under a promise to look at them again in a new and separate context - and a simple documentation system adopted soon. We still have reservations about the documentation system - especially its coverage of recyclable materials. We accept too that there may be other issues specific to waste e.g. definition of toxic and dangerous wastes which could be addressed at a later stage; but this requires time.

4. There is a fallacy which supposes that those who are insensitive to current controls and public opinion can be brought to order by imposing more requirements on them. The reality is that they will have more law to sidestep whilst the responsible sector - the vast majority of industry - will have added and costly burdens to accommodate.

5. Another major objection by industry to the Commission's proposal - whether a directive or, to our intense dislike, a regulation - is its coverage of secondary and substitute raw materials. My country - the UK - has a reclamation industry with a turnover last year of £2.5 billion.

   Not much is hazardous waste and not much crosses borders - the UK trade in secondary raw materials with the rest of the EEC was worth £224 million in 1982 - but economically it is still significant and environmentally it is very important indeed. The EC proposal threatens this business, by adding to the costs and workload of export etc. procedures, and indeed runs contrary to the Community's policy of encouraging reclamation and recovery wherever possible (thereby conserving scarce resources). UNICE cannot accept this feature of the proposal.

6. To conclude, UNICE wants to see the current proposal substantially reduced in scope and in demand, and the existing EC legislation given the opportunity to prove itself in practice. Otherwise it fears that we will simply be adding demand to demand, unfairly and unnecessarily penalizing those who responsibly try to satisfy them and possibly leading to the adoption of inappropriate disposal options.

September 1983

Department of Transport
Room C18/06
2 Marsham Street London SW1P 3EB
Telex 22801 Direct line 01-212 5190
Switchboard 01-212 3434

APPENDIX 4.5

28 July 1980

Dear Sir

THE MOTOR FUELS (LEAD CONTENT OF PETROL) REGULATIONS 1976

As you know, aviation fuel is currently exempt from the rules governing the lead content of petrol. Unfortunately when the regulations were made we overlooked the need to specify at the same time that aviation fuel could also be sold and used for the testing of fire extinguishants for the protection of aircraft. As a result manufacturers who need to test their equipment have not legally been able to obtain the fuel to do so.

The Minister has now therefore signed an Instrument of exemption to deal with this anomaly. A copy is enclosed for your information.

Yours faithfully

Eugenie Flanagan

MRS E C FLANAGAN
Vehicle Standards & Engineering Division

ANNEX 5 - TAXATION

General

The comments in this paper are mostly derived from views expressed by CBI members. The timetable of consultation has not permitted the consideration of a compendium paper by the CBI's Taxation Committee and the comments therefore should be treated as preliminary and tentative. Fuller and more comprehensive treatment is impracticable without more time in which to examine the issues. Current studies by our Tax Reform Working Party may also throw up new ideas which we will want to consider in due course.

Volume and Quality of Fiscal Legislation

A brief glance at the ever increasing bulk of the legislation on taxation raises a number of important issues. There has been addition of layer upon layer of fiscal legislation - last year's Finance Bill set records - without a rigorous examination of what is being done and how best to fit it into existing rules.

As the CBI made clear in its response to the Green Paper on Corporation Tax much of the present complexity stems from archaic tax rules which have little or no relevance to modern business conditions.

In addition, the cramming of fiscal measures into the strait-jacket of the annual Budget - Finance Bill programme leaves little or no time for effective scrutiny of the measures being considered. More attention at the pre-enactment stage, whether by greater use of consultation on proposals, consideration of draft clauses, or specialist expert committees-Parliamentary or otherwise - might well improve the quality of the end product. Further thoughts on the inadequacy of the present system are set out in our proposals for a Technical Taxation Bill attached. We remain concerned that the list of difficulties to which we draw attention in our Technical Budget Representations each year seems to increase in total with little sign of diminution due, inpart at least, to pressure on legislative space.

Tax Law is clearly an area where the fullest early discussion with business can pay handsome dividends. This applies not only to laws which need to be enacted but also to the various forms of subordinate legislation and rule-making.

A fresh approach to the whole process of fiscal legislation might enable the draftsman to consider ways of making tax law clearer and shorter. Codification and consolidation are matters which justify further examination in this context.

Administration

The size of the as yet incomplete report of the Keith Committee on the enforcement powers of the Revenue Departments has highlighted just how many anachronisms exist as a result of the layer upon layer method of legislation. Good relations between taxpayers and officials are important in the efficient running of the tax gathering system. Over zealous pursuit of the last penny and use of complex rules in case there might possibly be some avoidance run counter to the thrust of a deregulation exercise.

Following the Keith Committee's report proposals are being put forward for legislation which tackles Customs & Excise matters in 1985 leaving Inland Revenue matters to be dealt with in 1986. We question whether a proper decision on the best possible way forward can be made without the whole package being available. Some of our members would go further and question the need for two separate Revenue Departments.

Perhaps too there should be a further look at the protection of confidential information supplied to non Revenue Departments from use by the Revenue Departments either now or in the future as a result of the Keith proposals.

Some of our members would welcome publication of more guidelines by the Revenue Departments or at least greater insight into their interpretation of the law.

Others have mentioned the need for improved availability of fiscal publications from HMSO. Delays relating to this year's Finance Bill were most unfortunate and steps should be taken to prevent a recurrence.

Points Specific to the Inland Revenue

A number of comments received by us are specific to each of the Revenue Departments. For the Inland Revenue concern has been expressed over:

a The desirability of improved communications between different districts and offices so that the same information is not sought twice over.

b The costs to business of running the present perhaps too highly sophisticated system of PAYE. Simplification could be made to year-end rules and returns such as forms PIID, and greater use of payslips in lieu of forms P60 and perhaps P14. The introduction of computerisation may be a good time to review the system perhaps with an eye on foreign, say US, practice.

c The opportunity provided by computerisation to take a fresh look at the relationship between the tax and social security systems.

d The case for consolidating the rules relating to Schedule E, benefits in kind and PAYE either separately or as part of another Taxes Act consolidation.

e The attitude found in some quarters that any flexible approach to working arrangements must involve an element of cheating. This is not conducive to greater use of part-timers and home-workers and genuine self-employment.

f The continued existence of Section 482 ICTA, following the abolition of exchange control a matter we now understand to be under Ministerial scrutiny.

g The mechanics of the £8,500 threshold for benefits in kind.

h The powers contained in Section 38 Schedule 15 FA 1973 as modified in Sections 81 and Section 124 (4) FA 1984 to impose the tax burdens of defaulting sub-contractors on innocent holders of petroleum licences.

Points Specific to Customs & Excise

a A rather general point made to us on VAT asks whether after eleven or so years of operation there is not scope for simplification and an analysis of administrative and compliance burdens. Too fine a pursuit of detail may be counterproductive.

b Where it is intended to implement changes business should be given time for full consultation. Examples of difficulties which spring to mind relate to last year's partial exemption rule changes and, currently, VAT on car expenses, which in original form would entail onerous record keeping.

c Some of our members feel that improvements could be made to the terms in which the rules are set out in statutes, notices and the leaflets issued by Customs.

d The requirement of guarantees in relation to VAT on imports has also been questioned and other aspects of this have been mentioned in responses on the Customs procedures side.

Conclusion

This paper represents no more than the tip of the iceberg in relation to possible taxation de-regulation. We would welcome the opportunity to consider the topic more fully and would be happy to supply examples of recent submissions on detailed subjects where we have questioned the burden of compliance.

Annex 6: Customs and Excise: Trade issues

1 Areas Where Reduction in Compliance Costs Would Make a Difference:-

(a) A reduction in the volume and complexity of export paperwork

(b) Reduction or simplification of IBAP procedures.

(c) Simplification of Community transit procedures, particularly in relation to T5's and IBAP scheduling.

2 Main Obstacles to Cost Reduction:-

(a) Vat on Imports - according to a number of members, VAT on imports has proved to be a burden on many traders, particularly the procedures relating to deferred payments and guarantees.

(b) Lack of flexibility in accepting information direct from commercial documents.

(c) Political moves which disregard commercial interests (removal of PVA)

(d) Simple concepts developed into complicated procedures (SAD).

(e) Inconsistent interpretation of regulations in different EEC states.

Cont'd/...

(f) Lack of effective trade consultation preceding implementation of new procedures (October 1981).

(g) Current requirement for absolute accuracy i.e. no differentiation between genuine mistakes and deliberate fraud.

(h) Current drive for reduction in staffing often disregarding the needs of traders.

(i) IPR - EEC is investigating to put an end to the protective test. Why have Departments of Trade and Industry now decided to more rigorously enforce the protective test?

(j) Period Entry - Imports - HMC+E currently trying to promote period entry yet have just decided that all traders must present form C305 each month, even for NIL returns (the info to complete the C305 comes from local C+E).

3 What Areas of Regulation Should be Amended:-

(a) Allowance for wide ranging trade consultation particularly on practicalities before introduction of new procedures.

(b) Moves towards use of traders commercial records/ documents rather than separate customs records/ documents. ie. Customs refund control register/traders order files. C44B/Greenline SSN.

(c) Genuine moves towards simplification i.e original SAD concept.

(d) EEC wide commitment to cooperation with COMPROS on alignment and simplification of forms.

(d) Return Goods Relief - CTC 402 is for UK returned goods. C+E have stated that when goods are owned by the importer at time of import, relief will be allowed from VAT. This is not happening. Port Customs are asking for VAT to be deferred (paid) + unnecessary form C1314 completed, thereby negating the relief.

(f) Duty Reliefs - there are many duty (external) reliefs. Now that import VAT is a 'duty', there are very few reliefs which extend to both types of payable duty.

4 How to Monitor and Control Costs:-

(a) Increased use of computers by Custom with flexibility to allow input from a number of different sources.

(b) Spot checks only on reliable companies with some error tolerance but high penalties for deliberate fraud or culpable negligence.

(c) Continued wide ranging trade consultation.

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Director-General
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Secretary
Denis Jackson

CBI

Annex 7: Standards, Weights and Measures

G Riggs Esq
Department of Trade and Industry
Room 241
Santuary Buildings
Great Smith Street
London
SW1

14 December 1984

Dear Mr Riggs

DEREGULATION EXERCISE

I attach for your interest a copy of our response to the Committee currently reviewing the provisions and implementation of the Weights and Measures Act.

The general view on this review seems to be that it has been conducted with an unduly low profile, which has caused concern to some CBI members who are users rather than manufacturers of (industrial) metrology equipment. Companies with several geographically distinct operating divisions particularly found the consultation and flow of information, on the part of the DTI, less than satisfactory.

On the subjects of Health and Safety, and Consumer and Fair Trading Legislation, we remain in full support of the "reference to standards" approach, which HMG is now adopting in both areas. This principle is however not fully accepted in all quarters yet, and the tendency to hedge around the principle in such a way that reference to standards remains only possible in theory, not practice should be strenuously guarded against.

The European Community is also building on the "reference to standards" principle, to help speed up the removal of technical barriers to trade. We welcome the efforts which are being made at European level, and trust that the Commission will actively facilitate this work.

Yours sincerely

Anne C Humberstone
Secretary, Production Committee

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THE CBI RESPONSE TO THE METROLOGY REVIEW COMMITTEE

INTRODUCTION

1 On being notified earlier this year that the Department of Trade and Industry had set up a Committee (above) to review the metrological control of weighing or measuring equipment for use for trade, the CBI consulted its membership on the basis of the information supplied, through CBI News and by some direct correspondence.

2 The following comments on the Review in general represent their views as expressed to us, verbally and in writing; some specific technical issues raised with us, which the CBI is not qualified to interpret, are listed separately.

GENERAL COMMENTS

3 The CBI's consultation was carried out on the basis of information supplied to us, namely that advances in technology necessitated the Review, its terms of reference, and the composition of the Committee itself. Later we were able to advise our members that two sub-committees would be dealing with aspects of direct relevance to users, but on which we had no further information.

The responses indicated a general dissatisfaction with the adequacy of the background information, in that members felt they had "nothing to get their teeth into".

4 In spite of the CBI's strong expression of interest in the Review, in the absence of a nominated representative on the Committee, we were unable to supply interested members with any further information on the Review's progress. Members felt that this represented shortcomings in the DTI's consultative procedures in this instance.

5 Members who fell into the category of users of industrial metrology equipment, rather than others, felt that their very diverse interests were inadequately represented on the Committee itself, and did not feel that the consultative procedure had mitigated this to any extent. Some major users among the respondents expressed the view that the DTI should have informed, and consulted them direct, as we understood it planned to do with all UK companies who had submitted equipment to NWML for pattern examination within the last few years.

6 We understand the difficulties inherent in consulting such organisations, compounded by the existence in many cases of geographically distinct operating divisions, and it was our wish to facilitate this which prompted our seeking representation on the Committee.

7 User members felt generally at a disadvantage to manufacturer members in knowing what was going on.

8 Not unexpectedly, the points made by manufacturer and user members were often markedly different, and indeed many in the user category were quite unsure whether or not the Review, or any legislative/implementing amendments it would eventually propose, would impact on their activities. Again, we were unable to supply them with any helpful information.

9 Both manufacturers and users of equipment commented on the desirability of self-certification/approvals by the manufacturers. Manufacturers felt that this area offered the opportunity to speed up procedures in the short term - it was suggested that those companies who have significant investment in R&D and test equipment should be able to submit test data to the Weights and Measures Authority, who should acccept it with occasional audit of facilities, thus avoiding the additional costs of further testing by the Authority. The only aspect of this placing of greater responsibility on the manufacturers which concerned users was that this should not result in additional costs for the purchasers, particularly those who themselves have a long history of close Governmental control in their weighing/measuring activities and follow Codes of Practice which involve checking weighing/measuring devices regularly against standards, on site.

10 Some members compared weights and measures approvals procedures and related costs unfavourably with those of other countries, and cited several examples where cost or time delays were experienced when attempting to introduce new weighing/measuring techniques into their business operations. Sometimes the cases involved a device manufactured and approved overseas, but by no means always.

11 It was also emphasised that "approval" did not necessarily mean that a device was suitable for use with all products, and that the purchaser had always to satisfy himself on this point.

12 It was also emphasised that legislation and approvals, certification procedures etc had perhaps been too much based on retail practices, and that they should be updated to cater fully for, and take continuing advantage of technological developments in industrial high speed weighing and packaging, and in monitoring packed weights for legal control purposes.

13 It was thus felt that assurance of the accuracy and precision of metrological weighing and measuring equipment utilising microprocessor and computer techniques should be accommodated in the approach to equipment design specification, rather than be left to the more traditional approach of performance checking that is less adaptable to appraising modern equipment and likely future derivatives of it.

14 With the exception of the small number of technical points, to which earlier reference is made, members at this juncture generally felt that they would be better placed to comment when the Committee produces its report at the end of the year. It was felt that this would pose rather more specific questions on which they would be able to make comments to the point.

15 For example, one respondent mentioned to us the possibility of a new extra body to regulate suppliers and repairers, with a statutory duty to consult with and involve suppliers and consumers in the future workings of metrological control. More information is needed however on such proposals, before any meaningful comments can be made.

16 Technical criteria used by the Authority are liable to change at very short notice; it has been suggested that technical criteria, like any other form of restriction, guidance or legal enactment should have a notification period of at least 3 months. It is possible that some manufacturers may not learn immediately of these changes through the Trade Associations, particularly if they are not members. This, together with the problem of the amount of time spent waiting in the queue, can lead to sales opportunities being lost.

TECHNICAL POINTS

17 Industrial measuring devices must be able to maintain accuracy under non-steady state conditions, such as dusty atmospheres, vibration of temperature change. Load cells in the past were affected by temperature but the situation has improved with later products. Microelectronics applied to strain gauges are very susceptible to situations where the actual weighing element being sought can be overtaken by sheer temperature changes occurring within the structure incorporating the strain gauge so that the relationships conflict.

18 Any measuring device or equipment used in British Standard tests should itself be made to a single Standard. The need for this is self-evident as any departures from Standard quality and dimension of equipment for measuring in an arbitrary test situation is a fundamental shift from the Standard conditions. It is not satisfactory to regard small differences as not significant.

19 Considerable delays in commissioning of plant have been experienced through the use of microelectronics circuits which have not been fully screened from stray sources. Insufficiently smooth power sources have also been troublesome.

20 It would lessen cost and complexity if only those parts of a weighing/packaging system which affect weighing accuracy were identified and hence certified.

21 A variety of bespoke systems can be made up from tried and tested modules, thus keeping costs down. Special requirements may frequently be catered for by variation of a module rather than the whole system. For industrial use a form of pattern approval for modular systems is justified.

22 Where makers have in fact offered their equipment within particular specified limits, industrial users have been satisfied with the accuracy of weighings delivered.

CONCLUSION

23 The CBI is anxious to ensure that the views of manufacturing industry, which we understand represents the majority of customers for weighing and measuring equipment in the UK are taken fully into account, as we understand the Review Committee will be proposing changes to the current legislation which could significantly affect this large sector of the user market for such equipment.

24 Of all the interests within CBI membership, this group has indicated to us significant concern on this point; other interest groups seem generally more confident that their viewpoints will, and are being taken into account as this Review progresses.

25 We look forward with interest to the opportunity of studying and commenting upon the Committee's Report and Recommendations.

Annex 8: Statistics

The main points raised in discussion at the Statistics Working Party were:

- unlike many other government requirements, co-operation in statistical inquiries was not just a burden on business, because firms did get some return in the form of published statistics. Members agreed that companies did not mind filling in forms if the forms were well-designed and the results were useful to the firms as well as to government;

- companies could be allowed to supply information in a form that was convenient to them. This would be particularly useful where computers could be used to provide the required statistics.

Con PO1: Small Finds Pt 5