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P.01325

PRIME MINISTER

Nationalised Industries' Bill:

E(NI)(84)6

BACKGROUND

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At their meeting on 26 April 1983 (E(NI)(83)5th Meeting) the Sub-Committee agreed that legislation should be prepared to reform the statutes affecting the financing of the nationalised industries.

The legislation would deal with the coverage of statutory borrowing limits; powers to raise private finance; the claw-back of surplus funds; setting financial targets; the content and form of Reports and Accounts; and the creation and privatisation of subsidiaries.

- B 2. At their meeting on 17 January 1984 (E(NI)(84)1st Meeting) the Sub-Committee also agreed that appropriate provisions relating to the dismissal and compensation of nationalised industry board members should be included in the Bill.
3. There is provision for the Bill in the legislative programme for the 1984-85 Session of Parliament.
4. Since the two previous meetings of the Sub-Committee there have been further discussions at both official and Ministerial levels, with the following results.

(i) Reform of financial statutes

On 17 May the Chief Secretary, Treasury wrote to the Secretary of State for Energy putting forward detailed proposals. For the most part these



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had already featured in the papers previously considered by E(NI) or were logical developments. But an important new proposal was that power should be taken to allow sponsoring Ministers to require the holding of a 'value for money' (VFM) audit. The Secretary of State for Energy replied on 29 May objecting to this proposal, and others; and raising the more fundamental question whether it would be right to proceed with the Bill at all. He suggested that the Bill might be perceived by some as a major extension of Government powers over the nationalised industries, and used by others as an occasion to press for even more powers than were proposed. The Secretary of State for Trade and Industry wrote on 4 June. He shared the misgivings of the Secretary of State for Energy about the Bill as a whole and the VFM proposals. Both he and other sponsoring Ministers also raised various detailed points.

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Whereas
Secretary of State
for the Environment C2

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(ii) Board Members

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On 18 May the Chancellor of the Exchequer wrote to the Secretary of State for Trade and Industry with detailed proposals on the appointment, dismissal and compensation of nationalised industry board members. Sponsoring Ministers have broadly accepted these proposals, subject to a number of points of detail.

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5. Your Private Secretary's letter of 6 June asked the Chief Secretary to bring forward a paper on the matters covered in his letter of 17 May. The Chief Secretary's memorandum E(NI(84)6 responds to this request. It reaffirms the arguments in favour of the proposed Bill. It maintains the proposal for powers



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to require VFM audits as both justified in substance and likely to be tactically advantageous. However, it suggests a number of modifications to certain other proposals in an attempt to meet points made by other Ministers in the correspondence.

6. E(NI(84)6 suggests that, if the proposals in it are approved, details should be sent to the Nationalised Industries' Chairmen's Group (NICG) and an announcement made to Parliament. Details could then be discussed with the industries (there has so far been no consultation with them).

MAIN ISSUES

7. The main issues before the Sub-Committee are as follows.

(i) Now that the proposed Bill can be seen as a whole, should it be proceeded with?

(ii) If so, should it include powers to require a VFM audit?

(iii) Are the other detailed proposals in E(NI)(84)6 acceptable?

(iv) Consultations and announcements.

Case for the Bill

8. The case for the Bill is set out in paragraphs 2 to 7 of E(NI)(84)6. The case against has been stated by the Secretaries of State for Energy and Trade and Industry in their letters of 29 May and 4 June respectively: essentially, it is that the legislation will be regarded as an erosion of the industries' commercial freedom.



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9. The Chief Secretary is certainly right in claiming that virtually all the proposals in E(NI)(84)6 - apart from those relating to VFM audits, discussed below - have already been approved, at least in general terms, by the Sub-Committee in earlier discussions. However, some Ministers may feel that when it is set out in extenso the Bill seems less attractive than it may have done before. Moreover, it is probably fair to say that the Bill has two aspects, which have not always been clearly distinguished.

(i) Some of the proposed revisions are no more than the codification of existing law and practice: for example, the codification of borrowing powers. It is unlikely to be disputed that these are useful measures of reform which are unlikely to raise much controversy. Equally, they will not have much effect of substance.

(ii) Other proposals, such as those relating to VFM audit and ~~the~~ giving Ministers greater powers of direction in the context of privatisation (see Section 6 of Annex B to E(NI)(84)6) will have effects of substance: paragraph 5 of the memorandum claims that they will 'greatly ease the privatisation of subsidiary activities and the sale of individual assets' and 'strengthen the Government's legislative powers'. By the same token, they are much more likely to be the subject of objection from the industries and others.

It will be important for the Sub-Committee to be clear about the main underlying purpose of the legislation, and whether the achievement of that purpose justifies whatever controversy and criticism it is thought likely to raise.



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Value for money audits

10. It does not seem to be in dispute that it is desirable to encourage the development of VFM audits of the nationalised industries. The disagreement is more a matter of tactics.

(a) Vis-a-vis the industries Mr Walker and Mr Tebitt appear to be saying that a more informal approach will be preferable.

(b) Vis-a-vis Parliament Mr Walker argues that it would be better not to chance proposals which will inevitably be taken as conceding the principle but not going far enough on the details. Mr Rees argues, on the contrary, that the Government is bound to come under heavy pressure to include VFM provisions in the Bill and that it would be better to put forward, from the outset, a provision which the Government is prepared to defend.

Break-even duty

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11. The letter of 30 May from the Chancellor of the Duchy of Lancaster suggested that the original 'break-even duty' should be replaced (not supplemented) by a duty to meet a financial objective prescribed by the Secretary of State. It is in any event clear that if it is retained the 'break-even duty' will need re-definition to cover the case of industries which require continuing financial support (a point made by the Secretary of State for Trade and Industry in connection with British Shipbuilders). The Chief Secretary does not argue strongly in favour of both retaining the 'break-even duty' and taking power to prescribe financial objectives, but suggests that it would still be right to do so, on the grounds that dropping the break-even duty might be



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taken as a signal that the Government was relaxing the pressure on the industries. Since the financial objective given to a nationalised industry is bound to be more demanding than break-even, the Sub-Committee may feel that this argument is open to doubt. To the extent that it has force it could be met by requiring the Secretary of State to set a financial objective of at least break-even (subject to the points in paragraph 10 of E(NI)(84)6).

12. Mr Walker raised objection in his letter of 29 May to the possibility that performance aims and external financing limits (EFLs) might be given statutory force. The facts are as follows.

*but not electricity
or gas where pricing
is most controversial.*

(a) The legislation applying to several industries already allows the sponsoring Minister to set 'financial objectives' with statutory force. (See section 5 of Annex A to E(NI)(84)6).

(b) The Chief Secretary proposes to apply similar provisions to all industries.

(c) Technically, the words 'financial objectives' would cover performance aims and EFLs, which could therefore be given statutory force.

(d) But Treasury Ministers do not intend to propose any change in the existing arrangements, under which performance aims and EFLs are agreed informally (ie not under statute) with the nationalised industries.

Other detailed points

13. Other detailed points raised by Ministers are discussed in Annex C to E(NI)(84)6. Most of them include



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attempts to meet the concerns expressed in the correspondence. There seems to be nothing to add to the points in the Annex.

Consultations and announcements

14. So far, there has been no discussion of the proposals with the NICG. If Ministers decide to proceed with the Bill the NICG will certainly have to be consulted. But there are two points that the Sub-Committee may wish to discuss.

(a) Basis of consultation

Should the NICG be consulted only about the details, it being made clear to them that Ministers have decided the principle and will not change their minds; or should the possibility of second thoughts on the principle be left open? To make it clear at the outset that Ministers have made their minds up before listening to the NICG may be provocative. On the other hand, there will be little time to engage in a fundamental debate; and the proposals, so far as they are not mere codification, involve questions of policy rather than day-to-day management; policy is a matter for Government.

(b) Parliamentary announcement

The Chief Secretary proposes to announce the Government's intentions to Parliament. Some Ministers may question whether this is necessary. It is true that no public announcement has yet been made; and it might seem odd, or even discourteous to Parliament, to introduce legislation next Session without previous notice. On the other hand, an announcement of firm intentions without prior consultation with the NICG might increase the risk of difficulties with the Chairmen.



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HANDLING

15. Although it is difficult to divorce the question of the desirability of the proposed Bill from the question of what it should contain, it is likely to be convenient at least to try to separate out the more detailed points that have been raised in the correspondence. The only point of detail that seems likely to influence views are the general desirability of the Bill is whether it should include powers to require VFM audits. You might therefore devote the first part of the discussion to those two questions, and then turn to points of detail.

Desirability of Bill and VFM powers

16. You will wish to invite the Chief Secretary, Treasury to introduce the discussion, and the Secretary of State for Energy and the Secretary of State for Trade and Industry to develop the arguments they have advanced in previous correspondence.

Other points

17. It would probably be most convenient to work seriatim through

(i) paragraphs 9 to 12 of E(NI)(84)6 on the break-even duty and financial objectives;

(ii) the separate paragraphs of Annex C to E(NI)(84)6.

In each case you might ask whether the proposals in the memorandum are accepted; only if objection is raised will discussion be needed.

Consultation and announcements

18. The final part of the discussion might then consider on what basis consultations with the NICG should be



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conducted and whether there should be a Parliamentary announcement of the Government's intentions. The Chief Secretary, Treasury might be invited briefly to elaborate his proposals; any or all of the Ministers with sponsoring responsibilities may wish to comment.

CONCLUSIONS

19. You will wish the Sub-Committee to reach conclusions on the following.

(i) Whether the proposed Bill should be proceeded with.

(ii) If so, whether it should contain powers for sponsoring Ministers to require the carrying out of value for money audits.

(iii) Whether the proposals in E(NI(84)6 are accepted as regards -

(a) break-even duty and financial objectives;

(b) the matters discussed in Annex C to the memorandum.

(iv) The basis of consultation with the Nationalised Industries' Chairmen's Group.

(v) Whether the Government's intentions should be announced to Parliament.

PLG
P L GREGSON
Cabinet Office.
28th June, 1984