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E(80) 4th Meeting

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CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

MINUTES of a Meeting held at  
10 Downing Street on  
WEDNESDAY 13 FEBRUARY 1980 at 10.30 am

PRESENT

The Rt Hon Margaret Thatcher MP  
Prime Minister

The Rt Hon William Whitelaw MP  
Secretary of State for the  
Home Department

The Rt Hon Lord Carrington  
Secretary of State for Foreign  
and Commonwealth Affairs

The Rt Hon Sir Geoffrey Howe QC MP  
Chancellor of the Exchequer

The Rt Hon Sir Keith Joseph MP  
Secretary of State for Industry

The Rt Hon James Prior MP  
Secretary of State for Employment

The Rt Hon Peter Walker MP  
Minister of Agriculture,  
Fisheries and Food

The Rt Hon Michael Heseltine MP  
Secretary of State for the  
Environment

The Rt Hon John Nott MP  
Secretary of State for Trade

The Rt Hon David Howell MP  
Secretary of State for Energy

The Rt Hon John Biffen MP  
Chief Secretary, Treasury

THE FOLLOWING WERE ALSO PRESENT

The Rt Hon Lord Hailsham  
Lord Chancellor

The Rt Hon Norman St John-Stevas MP  
Chancellor of the Duchy of Lancaster

The Rt Hon Angus Maude MP  
Paymaster General

Sir Ian Percival QC MP  
Solicitor General

The Rt Hon Michael Jopling MP  
Parliamentary Secretary,  
Treasury

Sir Kenneth Berrill  
Central Policy Review Staff

SECRETARIAT

Sir Robert Armstrong  
Mr P Le Cheminant  
Mr P Mountfield

SUBJECT

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

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IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

Previous Reference: E(80) 3rd Meeting

The Committee considered a memorandum by the Secretary of State for Employment E(80) 10, covering a note by officials on the options for restrictive immunities for secondary industrial action. They also had before them a further note by the Secretary of State for Employment, E(80) 12 about the experience of enforcing the provisions of the 1971 Industrial Relations Act against trade union funds; a letter dated 11 February from the Solicitor General to the Secretary of State for Employment about the basic legal questions which underlay the issues before the Committee; and a letter dated 12 February from the Lord Chancellor's Private Secretary, covering a note prepared by the Lord Chancellor on the general question of trade union immunities.

THE SECRETARY OF STATE FOR EMPLOYMENT said that the note by Officials circulated with his paper set out, as the Committee requested, the various options to be considered. In an ideal world, Option 1 - a complete ban on secondary industrial action - would undoubtedly be preferred, but given the history of recent years, this option was not at present open to the Government. To attempt it would divide the Confederation of British Industries (CBI) and deprive the Government of the clear support it would need from employers, at a time when it would inevitably be in conflict with the trade union movement. Option 2 would in his view be hardly less draconian in practice, and therefore raised the same problems. Options 3 and 5, which aimed broadly at restoring the law to the position in which it stood before the recent 'McShane' decisions, were not mutually exclusive. If the definitions of permitted secondary action laid down in Option 3 were combined with the legal tests proposed in Option 5, the Government would have a defensible position on which to base its own amendments to the present Employment Bill. At the same time, it could make it clear that there was a continuing review of trade union immunities, and possibly a Green Paper on the subject could be published later in the year. There would be some chance that the trade union movement would in the end acquiesce in this approach, and that the existing changes in the law would stick.

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In discussion the following main points were made -

- a. There was general agreement on the need to roll back the boundaries of trade union power. But the experience of the last Conservative Government had shown how necessary it was to proceed only with such legislation and policies as would be generally acceptable and could in practice be enforced. A complete ban on secondary action, on the lines of Option 1, did not appear to be practical politics in the immediate future.
- b. The Election Manifesto committed the Government to protecting employers and individuals against excessive trade union power. One way to do so was by re-stating the common law rights and remedies of employers and individuals subject only to a minimum of exemptions. Option 2 would achieve this purpose, so too, in a different way, would the approach suggested by the Lord Chancellor in his note. But this would in practice impose a very severe restriction on the right to take secondary action, and might almost entirely eliminate it. It would thus meet serious opposition from the unions.
- c. One method of restoring the rights of employers and individuals would be to exploit the existing right of action in tort, which was not barred by the present exemptions under Section 13 of the Trade Union and Labour Relations Act. It might be possible to extend the right to sue in tort, on the lines proposed in the first of the two draft clauses suggested by the Lord Chancellor. But this would be more than a declaratory position, and would impose a severe restriction on the right of secondary action.
- d. A more fruitful approach, in present circumstances, might combine the legal definition of acceptable secondary action, in Option 3, with the objective tests laid down in Option 5 - bearing in mind that these tests were cumulative. This procedure would leave the Courts with some measure of discretion in interpreting the law; but this could be advantageous. The two measures taken together would be like a double-barrelled gun; and one or other barrel would normally reach most targets. They would deal effectively with most if not all forms

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of secondary action, including blacking. By themselves, they would not restrict immunities much beyond the position as it had been in the winter of 1978-79, when secondary action had been widespread. But, combined with the severe restriction on picketing already contained in the Employment Bill, they would be likely, in practice, greatly to limit the scope for secondary action.

- e. All these methods raised the problem of enforcement. Even where an injunction was granted, its effect could be evaded by appointing fresh officers to a union executive, or replacing one set of pickets by another. It seemed possible that the present law would deal with the first though not with the second problem;
- f. These difficulties suggested that the immunities of trade unions, as well as of officers and members, should eventually be reconsidered. The Government need not be deterred by the experiences of the 1970-74 Administration. The circumstances were now very different, and the tide of public opinion was running in the Government's favour. There was no need to meet the problem head-on in the present legislation. But it should be made clear that, if the current measures proved ineffective or were frustrated, the Government would need to consider further legislation in due course. It should be remembered, however, that any action against the trade unions ran the risk of encouraging unofficial action. One possible solution would be to make it possible to take out an injunction against a trade union, without making the union liable for damages as a result of an industrial dispute.
- g. The law on picketing, as further amended by the Employment Bill, would be reasonably clear. There was however a case for further declaratory provisions, of the kind proposed by the Lord Chancellor, in the second of his circulated amendments. The Home Secretary would need to seek the views of the Chief Constables about these proposals and would do so urgently. Subject to this, an appropriate amendment to the Employment Bill could be moved at the appropriate stage. It was not a point which needed to be dealt with in the working paper.

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h. The Parliamentary tactics needed further consideration. A working paper embodying the Government's preferences should now be published as quickly as possible, without waiting for the end of the current steel dispute. In the light of consultations on that document, new clauses or amendments to the Employment Bill should be prepared and introduced, if possible before Easter. The Parliamentary tactics for doing so would require further consideration by the Ministers concerned.

THE PRIME MINISTER, summing up the discussion, said that the Committee had now agreed on the proposals which the Government should put forward in a working paper, for further amendments to the Employment Bill. These should take the form of a combination of Options 3 and 5 in the note by officials, with the tests in Option 5 being understood to be cumulative, and presented as far as possible in a manner which stressed the right of the employer who was not a party to a dispute to carry on his business without interruption of hindrance. The Committee did not rule out the possibility of further legislation in due course, and this should be made clear at the time of any announcement about the working paper. It should also be made clear at the appropriate time that the government had it in mind at a later stage to publish a Green Paper as part of a continuing review of trade union immunities. The Parliamentary tactics for handling the amendments would need to be separately considered.

The Committee -

1. Took note, with approval, of the Prime Minister's summing up of their discussion;
2. agreed that it was not practicable in the present Bill to go beyond a combination of Options 3 and 5 in the Note by Officials circulated with E(80) 12;
3. invited the Secretary of State for Employment to redraft his working paper in the light of the Committee's discussion, so as to combine options 3 and 5, and to present them so far as possible in terms of a restoration of the rights of individuals rather than as a reduction in the immunities of trade unions; and to circulate the re-drafted paper as soon as possible, with a view to publication on 19 Feb

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4. invited the Secretary of State for Employment to consult the interested parties about the contents of his working paper, and to submit fresh proposals to the Committee, in the light of such consultation, as a basis for the preparation of a new clause for inclusion in the Employment Bill;

5. invited the Secretary of State for Employment, in consultation with the Chancellor of the Duchy of Lancaster, and the Chief Whip, to consider the best tactics for handling the introduction of this new clause into the Bill during its passage to through the House of Commons;

6. agreed that, subject to consultation with Chief Constables to be undertaken by the Secretary of State for the Home Department, an amendment should be made to the Employment Bill about the conduct of pickets, on the lines suggested in paragraph 2 of the Annex to the Lord Chancellor's note of 12 February;

7. agreed that a Green Paper should be published later in the year on the continuing review of trade union immunities, and that the intention to do so should be made clear at the appropriate time;

8. took note that the Prime Minister would inform the Cabinet the following day of the Committee's conclusions.

Cabinet Office

14 February 1980

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