

Prime Minister

20 March 1980

MR HOSKYNs

This is a very good  
summary of the representations  
so far received. Paper for E  
with some rough thoughts  
night. ~~for~~ (Notes in  
writing from CBI, but

Mr Wolfson  
Mr Strauss

Mr Whitmore  
Mr Lankester ✓

IMMUNITIES FOR SECONDARY INDUSTRIAL ACTION

These reported changes of position  
is very significant. TL

As you know, Department of Employment have provided us with copies of <sup>24/3</sup> the serious representations they have received in response to the Consultative Document. In varying degrees, all 12 representations are to the effect that Mr Prior's proposals do not go far enough. I have summarised what seemed to me the three most important points in the note attached.

So far, we have seen no written comments from CBI, TUC or the Institute of Directors. I understand that the CBI have undergone a late conversion to the view that all forms of secondary industrial action should be unlawful. There was of course a substantial minority in Cabinet in favour of this view, and the majority of those who have commented have said the same. The more closely one inspects the principle of extending immunity to employees of first customers and first suppliers, the less sound it looks. It is widely regarded as unjust; it cannot be reconciled with the Manifesto commitment to extend the protection of the law to innocent parties; and it is arbitrary. The Secretary of State for Employment told E Committee on 13 February that in an ideal world a complete ban on secondary industrial action would undoubtedly be preferred. His principal argument against attempting it was the lack of clear support from the CBI.

In the light of these representations, Ministers may want to reconsider options 1 and 2 in the paper they discussed on 13 February. These options would remove immunities for secondary action. Alternatively, they could reconsider option 4 (John Nott's approach) which was to specify the cases where there would be immunity for secondary action. This would enable exceptions to be made where, for example, all employees had been sacked. It would also be possible to permit secondary striking where employees sacrifice their income, but not secondary blacking, where they incur no penalty. That way, no-one could say that the Government was affecting the right to strike.

If Ministers do not want to reconsider the basic approach, there are still a number of more minor changes which could be made to the proposals in the working paper. (b) in the attached note is one obvious example. There are several others contained in Sir Leonard Neal's letter, which obviously reflects deep thought and careful research on the subject. We could prepare a note on these points for the Prime Minister's weekend box. Before doing so, we need to see whether Mr Prior has already accepted some of the points. His paper will not be available until tomorrow.

It is very important that other E Committee members should know about the representations that have been received before the E Committee discussion. We ourselves need to know more about the CBI's position. Department of Employment should cover all this in their paper, but I am not sure whether they will.



ANDREW DUGUID

NOTES ON COMMENTS RECEIVED ON CONSULTATIVE DOCUMENT

1. Department of Employment have supplied us with comments received from 12 companies, employer organisations and individuals. These do not include comments from either the CBI or the TUC.
2. There are several important themes which recur in many of these comments:

- (a) Immunity should only be provided to participants in a primary dispute. Extending immunity to employees of first customers and first suppliers is arbitrary and unjustified.

Eight out of the 12 bodies unequivocally favour immunities being restricted to the participants in a primary dispute only. They argue that immunity for employees in first customers and suppliers is in principle unjust as it fails to extend the protection of the law to those not involved in a dispute. The 8 bodies who take this view are:

Delta Metal

GKN

~~BISEPA~~

CPS

Lansing-Bagnall

National Association of Steel Stockholders

Cement Makers' Association

Duport Steels Ltd.

Two of these organisations would go further: Lansing-Bagnall would like to see trade unions placed on the same basis as any other legal entity - this might make it possible for suits to be brought in respect of primary action under certain circumstances. Duport Steel argue that immunity for primary action should be conditional upon a secret ballot.

Only one comment explicitly endorses the "first customer, first supplier" boundary line - Mars Ltd.

Of the 3 other bodies to comment, the British Chambers of Commerce imply that they do not favour immunity for employees

of first customers and suppliers, but they reserve their full comments for the review which will lead to a Green Paper. The East Midlands Allied Press confine themselves to saying that the working paper proposals are 'not as clear-cut as one would wish.' Lovell, White and King make a more specific point, referred to at (b) below.

- (b) The proposed immunity for employees of first customers and suppliers should not give them blanket freedom to hit any vulnerable target - whether involved in the dispute or not.

This is the loophole about which the Solicitor-General was concerned several weeks ago. The Association of British Chambers of Commerce have pointed to the danger that the employees of a first supplier could stop supplies going to any other customer, and argue that this is unjustified licence. They suggest that these employees should only have immunity to interfere with contracts with the party in dispute.

The same point has been made by Mr Phillipps of Lovell, White and King. He argues that this proposal would enshrine an immunity in the legislation which may not have been there before McShane. (In a note from the Department of Employment's Solicitor, concern is expressed about action at a first supplier which is "directed outwards". But we do not yet know whether Department of Employment are proposing to close this loophole.)

Duport Steels refer to a graphic example of selective secondary blacking action in their letter. They say that supplies of their raw materials normally carried by rail were suspended in early January by the rail unions in support of the ISTC in their dispute with the BSC. Approximately £1.5m worth of stock was held up by the NUR.

- (c) The section 14 immunity should be removed, so that employers are free to sue either trade unions (with recourse to their funds) or individuals.

It is significant that the consultation document did not refer to the section 14 immunity. Nevertheless, 6 of those who

commented have unequivocally recommended that trade unions themselves should not be immune. These were:

Association of British Chambers of Commerce  
East Midland Allied Press  
CPS  
Mars Ltd  
Lansing-Bagnall  
Duport Steels.

In addition, BISPA recommended that if the Government felt unable to remove immunities for all secondary action, then at least the trade union immunity for secondary action should be conditional upon a ballot.

Lovell, White and King queried whether any recourse to union funds was proposed where an injunction is disobeyed. By implication they favoured this.

In most cases, those who favoured removing the section 14 immunity referred explicitly to the danger of individual martyrdom if the only action open to courts in some circumstances would be imprisonment of individuals.

ANDREW DUGUID

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We have just received representations from Ford who argue for clarification but no real toughening of the proposals. Also from Institute of Personnel Management who broadly support the Pirelli proposals except that they want enforcement of injunctions to assist individuals to be strengthened.

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