

Prime Minister

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Mr ✓ Scholar
cc Mr Mount
Mr Shipley

Mr Owen argues that it would be better to go for withdrawing immunity (i.e. extending what we're already doing) than making procedure agreements enforceable.

Ms 9/5

STRIKES IN ESSENTIAL SERVICES

Tomorrow's Cabinet will conclude the discussion of this topic. In advance of a sight of note which will be circulated for the discussion, I am commenting on Mr Tebbit's note of 6 May, which set out the issues. It summarised the position well ; no-strike agreements are probably expensive; no-strike legislation is unworkable. This leaves two options: removing immunity and making procedure agreements enforceable.

Removing Immunity

This approach follows the line already pursued in the 1980 and 1982 Acts. As Mr Tebbit observes, these measures, and those which are planned, will reduce propensities to strike in essential services, as elsewhere. Good arguments, then, for extending this approach and removing immunities altogether in essential services. The note mentions three objections to doing so, none in our view, decisive.

- 1) 1) the definition of "essential": No difficulty.
- 2) the effectiveness of withdrawing immunity depends on the willingness of employees or customers to take legal action. But so, too, does the Government's reliance on civil action, which has yet to be tested in the Courts. The difficulties are overstated in the note: need the absence of a contractual right to treatment deter NHS patients from suing health service unions? One could certainly envisage a steel producer, to whom the electricity industry has a statutory duty to supply, suing the electricity industry unions for damages arising from severance of supply.
- 3) the pressure to provide machinery to resolve disputes. It would be argued that withdrawal of immunity would

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amount to a denial of the right to strike, and that therefore there would need to be a provision to unilateral access to binding arbitration - an uncertain and expensive route. But while there would undoubtedly be pressure for this, it could be resisted, for the right to strike would not be denied; it would merely be attended henceforward with a risk of civil action.

Making Agreements Enforceable

Against the obvious advantages of this option it is maintained that procedure agreements are too vague and imprecise for judicial interpretation. This, again, overstates the difficulty. procedure agreements are hardly vaguer than the agreements - often verbal and implicit - between individuals in matters of family or property on which the Courts have to pronounce as a routine matter. In any case, the prospect that agreements would henceforward be enforceable would push both sides to clarify them better. A more sustainable objection to them is that the unions would walk away from agreeing any, unless the level of settlements looked attractive. It would be unrealistic, for example, to expect that the electricity workers would accept increases linked to the RPI in return for accepting procedural agreements which would be enforceable: they comfortably out-ran the RPI in the period 1974-1981.

To summarise, both options look workable but the withdrawal of immunity looks the better: it is an extension of the approach already adopted and involves no obvious costs.

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