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Prime Minister

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Mr Tebbit -> unable to attend but has commented in the attached minute.

P.01243

PRIME MINISTER

This brief is superseded by 18.4.84 JPK-11

AT 13/3

Strikes in Essential Services

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This meeting is a continuation of the Ministerial discussion on 15 November 1983 of how to carry forward the commitment in the Manifesto to "consult further about the need for industrial relations in essential services to be governed by adequate procedure agreements, breach of which would deprive industrial action of immunity".

2. On 15 November Ministers agreed with the Secretary of State for Employment that the following approaches should be rejected: making strikes in essential services criminal offences; "no-strike" agreements; making procedural agreements enforceable at law; or removing immunity from civil action entirely from strikes in essential services. They favoured the approach of making immunity for industrial action in essential services depend on the observance of procedures. It remained to be decided whether it would be enough to apply three simple tests suggested by the Secretary of State for Employment (no action during the currency of a substantive agreement, no action until all stages of any extant procedure agreement had been exhausted, and a minimum period of notice between deadlock in negotiations and the start of industrial action); or whether the legislation should prescribe the actual contents of procedure agreements in essential services and, if so, whether these procedures should include compulsory arbitration. The Secretary of State for Employment was asked to consider these points further and his minute of 13 February is the result.

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## MAIN ISSUES

3. The main issues are:

- i. whether the general approach of making immunity depend on the observance of procedures is still thought preferable to other approaches;
- ii. if so, whether it is sufficient to rely on the three simple tests rather than to prescribe the contents of procedure agreements;
- iii. whether this approach should be reinforced by other measures (eg relating to strike ballots in essential services);
- iv. what should be the definition of essential services;
- v. when the consultations should take place.

### Other approaches

4. It is unlikely that anyone will wish to revive discussion of the criminalisation of strikes in essential services. On no-strike agreements, there have been suggestions that the trade unions representing the non-nursing groups in the National Health Service may wish to pursue this approach. If the Secretary of State for Social Services raises this, the meeting will need to consider whether the price for such an agreement is likely to be acceptable. Articles in the press about Sir Leonard Neal's report for the Centre for Policy Studies may also revive the debate about:

- making all procedure agreements (ie not just in essential services) enforceable in law
- removing civil immunity entirely from industrial action in essential services.



  
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5. You are familiar with the arguments against making procedure agreements generally enforceable at law. Employers are opposed to this, on the grounds that the unions might invoke such powers to management's disadvantage where it suited them, but would refuse to enter into, and might even withdraw from, procedure agreements potentially of advantage to management.

6. On the proposal to remove civil immunity altogether from strikes in essential services, the main argument has been that the workers concerned would be entitled to some trade-off for the inhibition on their ability to bargain effectively with their employer. Sir Leonard Neal's proposals do in fact include such a trade-off in the form of compulsory arbitration. The potential drawbacks of that for the Government are discussed later in this brief in the context of Mr King's minute of 13 February.

Secretary of State for Employment's proposed approach

7. If Ministers confirm their earlier view that other approaches should not be pursued, the discussion can be confined to the approach of making civil immunity depend on observance of procedures and the points dealt with in Mr King's minute of 13 February.

8. The main weakness seen in Mr King's three simple tests was that the second test (no action until all stages of any extant procedure agreement had been exhausted) would have no significance unless satisfactory procedure agreements already existed. It was argued that to remedy this weakness some minimum procedure agreements should be required by law, providing for successive steps which would have to be passed through before industrial action could occur, and possibly

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including compulsory arbitration as a final stage.

9. Mr King has concluded that it would be best to stay with the three simple tests. He argues that in the essential service industries there are already adequate procedures on minor matters, such as grievances, where the step by step approach of discussion at successively higher levels may be helpful. On the major matters such as pay he does not consider the step by step approach as appropriate, since both management and unions tend to be involved at a high level and nationally from the outset. He also does not see any need to build more delay into the system since, unless the unions want to provoke a confrontation, it is usually possible for the employer to arrange for several rounds of discussion over a period. If the object is merely to build more delay into the system, it would no doubt be argued that this is adequately met by the third of Mr King's tests - the need to provide for a minimum period of notice between deadlock in negotiations and the start of industrial action.

10. The suggestion that the final stage in the prescribed procedure should be compulsory arbitration raises more fundamental issues. Mr King's approach leaves open the possibility of immunity for industrial action in essential services; he seeks only to remove immunity from action taken precipitately. Making immunity depend on compliance with compulsory arbitration would be equivalent in practice to removing civil immunity altogether from industrial action in essential services.

11. The main argument against compulsory arbitration is that it may tend to result in excessively high wage awards. Arbitrators, when put in the position of producing a final binding solution, may feel obliged to go some considerable

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distance towards meeting the union's claim. An attempt to circumvent this by providing for governmental or Parliamentary override might create more problems than it would solve. In effect it would be equivalent to giving the Government or Parliament the right, in the last resort, to fix the pay of workers in the particular services concerned and, if civil immunity for industrial action had been removed, the only means of protest would be to defy the law. The feeling of Ministers at the meeting on 15 November was that it would not be feasible or prudent to attempt to screw down the lid on industrial action in the essential services too tightly, and that the better approach was to circumscribe the circumstances in which industrial action could attract immunity rather than to remove the possibility altogether.

#### Strike ballots

12. At the meeting on 15 November it was suggested that Mr King's approach might be reinforced if the legislation currently before Parliament on strike ballots provided for a higher majority to be secured for strike action in essential services. The strike ballot provisions which have passed through Committee Stage in the Commons contain no requirement that immunity from civil action should depend on securing a given majority. The requirement is merely to have a ballot. This is deliberate, as existing union requirements vary. In some cases the test is as high as a two-thirds majority of those entitled to vote. In the case of the miners, as is well known, the requirement is 55 per cent of those voting. It was thought undesirable to put a threshold in the legislation. Levelling up the requirement to the existing highest levels might have been held to be too restrictive while pitching it lower would have been a retrograde step. Since the general provision contains no threshold, it is difficult to provide one specifically for essential services. Mr King is therefore

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opposed to such a proposal and is in any case understood to take the view that the Government ought not to give the impression that strike action in essential services would be justified simply because a large majority of the workers voted in favour of it.

#### Definition of essential services

13. It will be necessary to define the essential services to which any special provisions apply. Mr King is understood to maintain the view he put to the meeting on 15 November, ie that the provisions should be confined to water, gas, electricity, and the health service. At that meeting it was agreed to avoid extending the list to include local authority employees such as sewage workers, although it was thought that an exception might be made for the fire service. The Home Secretary is thought likely to oppose this on the grounds that the pay indexation arrangements for the fire service make it unnecessary to take additional measures to deter them from industrial action. Sir Leonard Neal's proposals are understood to include not only Mr King's four services and also sewage workers but, in addition, workers who, while not directly employed in these services, could damage them by their industrial action. This would for example bring in the miners in respect of electricity. Moreover industrial action by workers in many industries could have an impact on the health service. Ministers will probably see disadvantages in a wide-ranging approach on these lines. They may therefore prefer to stay with Mr King's shortlist of four essential services. Even so, it would be realistic to expect that the Government may have some difficulty in justifying the selection, and may come under pressure to extend the list.

#### Timing of consultations

14. In his minute of 13 February Mr King suggests that, if

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his proposals are endorsed, they should be worked up into a consultative document. Unless industrial action of a kind on which the proposals would bite should take place in one of the essential services in the coming months, he would propose to issue the document in the autumn with a view to legislation in the 1985/86 Session. There might well be advantage in deferring publication until after the Trades Union Congress in September.

#### HANDLING

15. You will wish to invite the Secretary of State for Employment to introduce the proposals in his minute of 13 February. The Chancellor of the Exchequer may have general comments. The Secretaries of State for Energy, the Environment and Social Services, who have responsibility for services affected by the proposals, should be asked for their views.

#### CONCLUSIONS

16. You will wish to reach conclusions on:

- i. whether consultations on immunity for industrial action in essential services should be on the basis set out in the Secretary of State for Employment's minute of 13 February;
- ii. whether the proposals should be contained in a consultative document to be issued in the autumn with a view to legislation in the 1985/86 Session.

*PLG*

P L GREGSON

12 March 1984

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