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P.01397
PRIME MINISTER

Nationalised Industries Bill:

E(NI) (84)14

BACKGROUND

FLAGS A & B — The Sub-Committee decided at earlier meetings to bring forward legislation to codify and modernise the nationalised industry statutes, and to make fresh provision for the terms of appointment and dismissal of nationalised industry board members (E(NI) (83)5th Meeting, and E(NI) (84)1st Meeting). The Cabinet have agreed that such legislation should form part of the legislative programme for the 1984-85 Session of Parliament (CC(84)8th Conclusions, Minute 5).

FLAG C —
FLAG D — 2. When the Sub-Committee considered detailed proposals for legislation in June (E(NI) (84)3rd Meeting) some Ministers, notably the Secretary of State for Energy and Mr Channon representing the Secretary of State for Trade and Industry, expressed serious misgivings about the merits of the proposed Bill. They suggested that the proposals went further than E(NI) had previously agreed; and that they might be attacked by some as an erosion of the commercial freedom of the nationalised industries and used by others as the occasion for demanding still greater powers of direction, intervention and control. However, this view was not held by the Sub-Committee as a whole; and the Chief Secretary, Treasury was invited to proceed with drafting and to consult the Nationalised Industries' Chairmen's Group (NICG) about the Government's proposals. If those Ministers who had reservations about the Bill wished to argue against proceeding with it they could do so when the legislative programme for 1984-85 was finally decided in the context of the Queen's Speech.

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3. The Chief Secretary has consulted the NICG and has circulated a memorandum (E(NI)(84)14) reporting the outcome and making recommendations for further action.

FLAG E —

Content of the Bill

4. The NICG have expressed strong opposition to the principle of the Bill, which they argue would fundamentally alter relationships and remove the status of the nationalised industries as independent commercial entities. They particularly object to the proposals to give Ministers powers to set statutory financial objectives, restructure balance sheets, and dismiss board members, especially as the proposals put to them envisaged that the powers would largely be exercised without Parliamentary procedures. They have also suggested that there are likely to be many difficulties of drafting detail, and have said that a good deal of time will have to be allowed for consultation on this. Their views are set out at length in the memorandum annexed to E(NI)(84)14.

5. The Chief Secretary proposes modifications to meet some of these points.

(i) He suggests that some powers (notably those enabling Ministers to restructure balance sheets and to require disposals and the like in the context of privatisation) should be made subject to Parliamentary procedure. He also envisages that similar concessions might be made during the passage of the Bill, for example on the power to set statutory financial objectives (paragraph 3 of E(NI)(84)14).

(ii) He suggests that the proposals on dismissal might be marginally revised (paragraph 4 of his memorandum).

Subject to these points he recommends that the Government should go ahead with the legislation as previously envisaged.



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Timetable and handling

6. The Chief Secretary suggests that he and his Treasury colleagues could not handle simultaneously a Nationalised Industries Bill and a Finance Bill. This suggests that the Nationalised Industries Bill should be out of Committee by early March 1985; this in turn suggests that the Bill should receive Second Reading before Christmas, with introduction in early December.

7. The Chief Secretary also requests the assistance of Ministers from sponsoring departments during the passage of the Bill.

MAIN ISSUES

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

(i) Should the Government proceed with the Bill:

(a) broadly as the Chief Secretary proposes;
or

(b) with more substantial modifications?

(ii) Is the timetable proposed by the Chief Secretary realistic?

(iii) What arrangements should be made for Ministers from sponsoring departments to provide support during the passage of the Bill, if the Government goes ahead with it?

Should the Government proceed?

9. There is a good deal of potentially contentious material in the Bill. Of the 27 Clauses and 9 Schedules in the print circulated with the memorandum, the following seem particularly likely to arouse lively debate:

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Clause 2 (power to set general financial duty)

Clause 10 (restructuring of balance sheets)

Clause 11 (clawback of revenue surplus)

Clauses 14 to 20 (privatisation; disposals; scope of activities)

Clause 22 and

Schedule 6 (appointment and dismissal).

10. The fact that legislative proposals are contentious is not, of course, itself an argument against proceeding with them. The proposals in the Bill will undoubtedly put financial relations between the Government and the nationalised industries on a better footing; make privatisation easier; and provide more appropriate powers of appointment and dismissal. They will help establish disciplines analogous to those in the private sector, though exact equivalence is naturally not feasible. Most members of the Sub-Committee are likely to regard these as solid gains. But there are potential dangers from a number of quarters.

(a) There is the risk that both existing boards and potential recruits to them will regard the legislation as putting so much power in the hands of Ministers as to deprive the boards of essential managerial freedom. It may be possible to reassure them on the lines suggested in paragraph 6 of E(NI)(84)14, and by pointing out that the new powers relate to broad framework, not day-to-day management. Nevertheless, there is a difficulty: if too much weight is put on the argument that most of the Bill is 'simply putting existing practice into statutory form', the reply will be that in that case there is no justification for going to the trouble of legislation.



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(b) Consumer interests may criticise the power to set statutory financial objectives, restructure balance sheets, and clawback revenue surpluses, as cover for excessive price increases and depriving the industries of money which should be used for the benefit of their customers.

(c) Backbenchers may press for all Ministerial powers to be made subject to Parliamentary procedure; they may also stage a re-run of the debates of 1983 on the proposals in Mr St John Stevas's Bill to make the industries directly accountable to Parliament and their affairs subject to scrutiny by the Comptroller and Auditor General.


There may be a risk that unwelcome amendments will be carried in Standing Committee, or be avoided only by the giving of restrictive undertakings by Ministers. The Sub-Committee may wish to consider how best to reduce such risks.

Possible changes to the Bill

11. Although we have had no indication of specific points likely to be raised in departmental briefing, some members of the Sub-Committee might suggest changing the proposals in the Bill, particularly as regards the more controversial sections. It will be necessary to balance the benefits that such changes might bring in terms of better relations with the industries and an easier passage for the Bill against the risk that the Bill may be emptied of useful content.

Timetable

12. The Sub-Committee will wish to consider whether the timetable outlined in E(NI)(84)14 is realistic. It allows, as the Chief Secretary admits, little time for detailed consultation with the NICG. Of course, the Government can introduce the Bill when it wishes, no matter how many points are in dispute with the NICG. But the effect of doing so



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may be to prolong Committee stage: the industries are well able to formulate detailed amendments and secure and brief backbench sponsors.

13. It is possible, though perhaps unlikely, that if the timetable does seem likely to be very difficult, the Sub-Committee may regard that as an argument against proceeding with the Bill, at least in the next Session.

Support for Treasury Ministers

14. It does not seem appropriate to discuss in detail the arrangements for providing Treasury Ministers with support from other departments during the passage of the Bill. You will probably wish to confine the discussion to noting that such support will be needed, asking sponsoring Ministers for their cooperation, and inviting the Chief Secretary to discuss the details with them and the business managers.

HANDLING

15. You will wish to invite the Chief Secretary, Treasury to introduce his memorandum. Thereafter it will probably be convenient to divide the discussion into two main parts:

(i) the content of the Bill and whether to go ahead with it; if the Sub-Committee should decide that it is not worth going ahead, further discussion will be unnecessary. If they wish to go ahead, it will be appropriate to go on to discuss -

(ii) the timetable.

The main contributors to the first part of the discussion will be the sponsoring Ministers or their representatives (Secretaries of State for Energy, Scotland, Trade and Industry and Transport, and the Ministers of State from the



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Department of the Environment and the Welsh Office).
The Chief Whip will be able to advise on Parliamentary opinion.

The Chief Whip is also likely to be the main contributor to any discussion of the timetable.

CONCLUSIONS

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

(i) Should the Government go ahead with the Nationalised Industries Bill

- broadly on the lines proposed by the Chief Secretary; or
- with modifications?

(ii) What should be the timetable for the Bill?

(iii) What arrangements, in broad terms, should be made for providing Parliamentary support to Treasury Ministers during the passage of the Bill, if it goes ahead?

17. It will be convenient to report the Sub-Committee's conclusions on (i) above to the Cabinet on 4 October when they consider the Queen's Speech on the Opening of Parliament
FLAS F — (see paragraph 2(a) of C(84)24).

PLG
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Cabinet Office.
1 October, 1984