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P.01451

PRIME MINISTER

Statutory Employment Protections

E(A)(84)67

BACKGROUND

On 24th July you held a meeting of the Ministers mainly concerned in order to review progress on reducing the administrative and legislative burdens on industry and in particular on small firms. Among the conclusions of that meeting were that the Efficiency Unit should conduct a scrutiny of the costs to business of complying with a wide range of Government requirements, and that the Secretary of State for Employment should separately study the effects of employment protection legislation. The study plans for the scrutiny by the Efficiency Unit were agreed between the Ministers concerned (including Mr King) in October. The scrutiny was to examine the costs of compliance with employment protection law; but decisions on the scope and timing of any changes were to be taken on the basis of the separate exercise under the Secretary of State for Employment. However, it was hoped that the scrutiny would make a positive contribution to this separate exercise.

2. Although the scrutiny by the Efficiency Unit has not yet reached conclusions, the Secretary of State for Employment, in E(A)(84)67, brings forward proposals on employment protection legislation. We understand that he is anxious to secure guidance from his colleagues before Christmas, so that he can enter into consultations with interested parties early in the New Year. Mr King proposes increasing by Order the qualifying period for bringing a complaint of unfair dismissal to two years for all employees (at present it is two years for firms employing less than 20 people, one year for others). Other individual rights under employment legislation should be retained (E(A)(84)67, paragraph 4).

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MAIN ISSUES

3. Main issues are whether, as proposed by the Secretary of State for Employment,

(i) the qualifying period for bringing complaints against unfair dismissal should be raised from one to two years for all employees; and

(ii) other individuals' rights under employment legislation should be retained.

Unfair Dismissal

4. The Sub-Committee will need to consider the proposed change against the background that, as Mr King says, removing established employment rights is a highly sensitive issue (and particularly so after the GCHQ affairs); and that employers do not welcome change for its own sake (E(A)(84)67, paragraph 3). Points they will need to bear in mind include the following:

(i) Would the change be of significant help to employers? There is no indication from the discussion at Annex A to E(A)(84)67 (paragraph 26) that employers have either been consulted or have made their own representations on the point. Firms with less than 20 employees already have the benefit of the longer qualifying period.

(ii) Would the effects of a change be fair on individuals? It might well be argued that one year is long enough to decide in the vast majority of cases whether or not to continue to employ someone, though the two year period for the smallest firms might be thought justified as extra flexibility in recognition of the particular difficulties they face.

(iii) Balancing the considerations at (i) and (ii), does the likely benefit to business from the change appear to outweigh any risk of serious adverse reaction? Paragraph 7 of E(A)(84)67 says that the change would reduce the number of



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unfair dismissal cases by about one quarter, or 7000-8000 a year. From one angle, that is a measure of the relief to industry; from another, the measure of individuals with a potential grievance.

5. It might be argued that a decision on changing the unfair dismissal provisions ought to wait until the Efficiency Unit's scrutiny of the costs of compliance with employment law is available at the end of the year. If however the Sub-Committee are satisfied that it will be a worthwhile benefit to industry if the two-year period at present available to the smallest firms was available generally, they may feel that further information on compliance costs is not needed in this particular area of employment law.

Other employee rights

6. The balance of argument is however somewhat different in respect of Mr King's proposal (in paragraphs 4 & 5 of his paper) that employment rights other than protection against unfair dismissal should remain unchanged. The Minister without Portfolio in particular may argue that it would be wrong to close the door now on other changes in employment law without waiting for the Efficiency Unit's scrutiny of compliance costs in this area. The Sub-Committee might therefore conclude that they should return to the question of other employee rights after Christmas. This need not interfere with Mr King's plan to issue an Employment White Paper in the early spring of 1985.

HANDLING

7. You will want to ask the Secretary of State for Employment to introduce his proposals. The Minister of State, Department of Trade and Industry will have views on them. The Minister without Portfolio will probably have views on both substance and timing.

CONCLUSIONS

8. You will want to reach conclusions on:

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i. the change proposed by the Secretary of State for Employment to the qualifying period for complaining against unfair dismissal;

ii. whether the other rights of individuals under employment law should:

a. be retained, as proposed by the Secretary of State for Employment; or

b. be held over for further consideration in the light of the outcome of the Efficiency Unit scrutiny.

PLG

P L GREGSON

5 December 1984

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