CONCLUSIONS of a Meeting of the Cabinet held at Admiralty House, S.W. 1, on Thursday, 15th November, 1962, at 11 a.m.

Present:

The Right Hon. HAROLD MACMILLAN, M.P., Prime Minister
The Right Hon. THE EARL OF HOME, Secretary of State for Foreign Affairs (Items 3-5)
The Right Hon. LORD DILHORNE, Lord Chancellor
The Right Hon. HENRY BROOKE, M.P., Secretary of State for the Home Department
The Right Hon. IAIN MACLEOD, M.P., Chancellor of the Duchy of Lancaster
The Right Hon. ERNEST MARPLES, M.P., Minister of Transport
The Right Hon. FREDERICK ERROLL, M.P., President of the Board of Trade
The Right Hon. MICHAEL NOBLE, M.P., Secretary of State for Scotland
The Right Hon. Sir KEITH JOSEPH, M.P., Minister of Housing and Local Government and Minister for Welsh Affairs

The following were also present:

The Right Hon. GEOFFREY RIPPON, M.P., Minister of Public Building and Works (Item 4)
Sir JOHN HORSON, Q.C., M.P., Attorney-General (Items 4-5)

Mr. CHRISTOPHER CHATAWAY, M.P., Parliamentary Secretary, Ministry of Education (Item 4)

Secretariat:

Mr. A. L. M. CARY
Mr. J. H. WADDELL

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1. The Cabinet were informed of the business to be taken in the House of Commons in the following week.

2. The Minister of Labour said that the threat of an official strike at the Ford Motor Company works at Dagenham had been withdrawn in order to allow negotiations to take place between the unions and the management. Although the unions had some sympathy for the object which the management had in mind, namely the removal from their employment of a number of known and avowed trouble-makers, they had been placed in a difficult position by the refusal of the management to consult them in advance about the selection of the men to be declared redundant or about the undertakings which the management had tried to secure from all their workers as a condition of further employment. In his view it would be necessary for the management to make some concession to the unions; the most obvious concession would be agreement to discuss with the unions the individual cases of the men whom the firm wished to declare redundant or to dismiss. He would be prepared, if necessary, to see the Chairman of the Company privately to urge on him the importance of finding some reasonable compromise on these lines and to offer to establish some arbitral machinery to deal with cases in which the unions and the company could not reach agreement; he was, however, anxious to avoid associating the Government publicly with action which would in many quarters be regarded as a retreat by the management from the stand they had previously taken.

In discussion it was suggested that it would be undesirable for the Government to set up arbitral machinery which might have the appearance of derogating from the right of management to decide whom to employ and whom to discharge. It would be worth while considering whether some other compromise, based perhaps on rather more generous redundancy terms, might not be acceptable to the unions.

The Cabinet—
Invited the Minister of Labour, in any further action which he might think it right to take, either with the management of the Ford Motor Company at Dagenham or with the unions concerned, to bear in mind the point raised in their discussion.

3. The Cabinet had before them a memorandum by the Postmaster-General (C. (62) 181) covering the draft of a White Paper on broadcasting and television.

The Postmaster-General recalled that in the White Paper on Broadcasting and Television (Cmnd. 1770), published in July, the Government had given an interim statement of their views on the Report of the Committee on Broadcasting (the Pilkington Report). The substance of the draft White Paper annexed to C. (62) 181 had been approved by the Ministerial Committee on Broadcasting and Television, but there were some points on which the Committee had not reached agreed conclusions. On the main question, however, namely, the recommendation in the Pilkington Report for a radical reorganisation of independent television, there had been full agreement; and the draft contained an exposition of the reasons why the recommendation could not be accepted and of the Government's proposals for redefining the relationship between the Independent Television Authority and the programme companies. The Authority
would have a much more active role than in the past in connexion with programme standards, control of networking and control of advertising. The draft also dealt with certain other matters—particularly the question of a second programme of independent television, local sound broadcasting and pay-television—on which the Government, in the interim White Paper, had reserved their views; and with a number of further points of general interest, including Press interests in programme companies, a proposed levy on the profits of programme companies and the future financing of the British Broadcasting Corporation (B.B.C.). It would be convenient to present the White Paper shortly before Christmas, when it was hoped that the Television Bill could also be introduced; if the two could be published about the same time there might be no need for a separate debate in Parliament on the White Paper. Early approval was, however, required for the main points of policy dealt with in the White Paper, since progress could not be made with drafting the Bill until these points had been settled.

In discussion there was general agreement that the paragraphs in the draft which explained the Government’s reasons for rejecting the Pilkington recommendations on the future of the Authority and set out the Government’s alternative proposals for control of networking and programme planning held a satisfactory balance between the extreme positions which had been taken up on the one hand by the Pilkington Committee (who had considered that the purposes of broadcasting could not be achieved so long as the sale of advertising time remained in the hands of the programme companies) and on the other hand by those who thought that the present system should not be altered. There would be substantial support for measures tending to reduce the dependence of independent television on the four main programme companies and to ensure that the smaller companies would have a better opportunity than was open to them at present to contribute programmes of their own. In the detailed working out of the proposed levy system it might prove possible to help the smaller companies financially by adjusting the rate of levy to be imposed on them.

The Cabinet felt, however, that the question of Press participation in programme companies had not been dealt with adequately in paragraph 21 of the draft. In this part of their discussion the following points were raised:

(a) The Royal Commission on the Press, under Lord Shawcross, had recently reaffirmed the objections put forward by the Pilkington Committee to the control of programme companies by Press interests. Neither the Royal Commission nor the Pilkington Committee had however defined with any precision the circumstances in which a Press interest in a programme company should be regarded as dominant. It could also be argued that the case for preventing a Press interest becoming dominant had not been made out. But it would not in any case be satisfactory to dismiss the subject, as in paragraph 21, with a statement that the Postmaster-General would be empowered “to direct the Authority to suspend or cancel the contract of a company in which a newspaper holding gives rise to abuse”.

(b) The basis of the case for taking special action against dominance by Press interests was that control by one group of persons over channels of communication through both Press and television was in principle offensive. If there were, as the law and Government policy recognised, objections to monopolistic practices in other industries, it was difficult to deny that similar tendencies in communications ought to be kept under control. It would not be sufficient to say, in answer to criticism of inaction on this point, that the links at present existing between the Press and programme companies had been established for the legitimate purpose of
protecting advertising revenue and did not in practice give rise to abuse. Some people would hold that the violence of the reaction by the interested Press to the Pilkington Report was in itself evidence of an undesirable situation; and, although the Thomson interests in Scottish Television appeared not to have given rise to any definable abuse, the latent danger they represented could not be ignored.

(c) There might, however, be real difficulties in defining the measures required. There would certainly be difficulty in defining what was meant by an abuse and in safeguarding the Postmaster-General against claims for damages arising out of the suspension or cancellation of a contract. The specific proposal in paragraph 21 of the draft would have to be reconsidered.

(d) The fact that advertising agencies were prohibited from holding shares in programme companies might provide a useful precedent. But this prohibition was absolute; and if any Press participation were allowed the permissible limit would not be easy to define, since effective control could in practice be secured by a comparatively small holding.

(e) It might, nevertheless, be worth considering whether the Authority should be empowered to direct Press companies to divest themselves within a limited time of share holdings in programme companies above a defined percentage. It must be recognised, however, that this might have the result of forcing the companies to dispose of their newspaper interests rather than their programme company interests and might thus lead to the disappearance of more newspapers.

Summing up this part of the discussion the Prime Minister said that further thought should be given to the principles on which the Government should approach the question of Press participation and also the more general question, dealt with in paragraph 22 of the draft, about the character of programme companies. The Postmaster-General should consider, with the help of the Lord President and the Lord Chancellor, whether the Government should declare themselves opposed altogether to Press participation; and, if not, how and how far such participation should be limited and under what sanctions. The relevant passage in the draft should be revised and expanded in the light of the discussion and should be brought before the Cabinet again at an early meeting.

In further discussion of the draft the following additional points were raised:

(f) Discussions were in progress between the Chancellor of the Exchequer and the Postmaster-General about the proposed levy on the profits of programme companies, which was referred to in paragraph 23. On the precedent of entertainment duty, which had been adjusted to benefit the smaller cinemas, some adjustment might be made to assist the smaller programme companies.

(g) Paragraph 38, on B.B.C. finance, did not add materially to what had been said on this point in the interim White Paper. The Ministerial Committee had accepted in principle the Pilkington recommendation that the B.B.C. should be financed only from licence revenue, and means of ensuring this result would have to be further examined. The paragraph could, however, be held to imply that the Government might make some form of contribution and it would be better that no such inference should be drawn. The paragraph should therefore be omitted.

(h) It might be desirable to explain in greater detail the steps which were being taken to eliminate excessive violence in programmes (paragraph 34) and to distinguish the purposes of the committees
on children and on educational broadcasts (paragraph 18). These points should be further examined in consultation with the Home Secretary and the Minister of Education.

(i) The Ministerial Committee had been generally in favour of experiments in pay-television. It was pointed out, however, that while experiments might show whether there was any ground for the view that pay-television could not succeed in this country they would not throw much light on the question whether the established services of the B.B.C. and the Authority would suffer if it did succeed. There was a danger that, since pay-television would be distributed by wire only, at least at the outset, such major programme features as the organisers secured would be withheld from people living in the more remote parts of the country. In Scotland, in particular, there would be objection to a pay-television service, and accordingly to the proposed experiments, on these grounds. The general view of the Cabinet, was that safeguards could be devised against the pre-emption of major feature programmes by pay-television, that there was insufficient ground for withholding permission for experiments by wire and that, on balance, it would be appropriate to proceed on the lines described in paragraphs 42–45 of the draft.

(ii) It would be desirable to proceed at once with the discussions (paragraph 46) on Party political broadcasting.

The Cabinet—

1. Invited the Postmaster-General to arrange for further consideration to be given to the points raised in their discussion of the draft White Paper annexed to C. (62) 181; and to arrange, in particular, for consultation with the Lord President and the Lord Chancellor on the references to be made to Press interests in programme companies, and with the Home Secretary and the Minister of Education on the references to excessive violence.

2. Invited the Postmaster-General to submit to them at an early meeting a revised draft of the White Paper on Broadcasting.

3. Took note that the Chancellor of the Duchy of Lancaster would proceed with discussions with the political Parties and broadcasting authorities on Party political broadcasting.

4. The Cabinet had before them a memorandum by the Minister of Housing on the use of the buildings in Bushy Park which had been vacated by the United States Air Force (C. (62) 175).

The Minister of Housing said that, in view of the legal difficulties involved in using the buildings for housing homeless families, he had with regret decided to withdraw his proposal that they should be so used. It was however fair to add that the London County Council (L.C.C.) had shown no enthusiasm for the project. It would have presented them with severe administrative difficulties and would to some extent have cut across the present lines of their policy; a new L.C.C. reception centre for homeless families would shortly be opened and in general they were anxious to avoid the provision of accommodation for the homeless on a scale which might, however marginally, increase the size of the problem either by attracting more homeless families into the London area, or by encouraging people who could have found other accommodation to regard themselves as homeless. The L.C.C. were also anxious to increase, wherever possible, the provision of open spaces and recreational facilities generally.
In discussion the following points were made:

(a) To spend a substantial sum of public money—of the order of £100,000—in demolishing buildings which could have been used for housing or for other purposes would attract a great deal of criticism. Legislation would, however, be required for any continued use of the buildings, certainly for housing purposes, and it was unlikely that the Opposition would facilitate the necessary Bill without at the same time involving the Government in a general and controversial debate about the problem of the homeless. Legislation would equally be required if the buildings were to be used for a teacher training college.

(b) There would be great practical difficulty in allowing the buildings to stand empty. Whatever arrangements were made for guarding them they would in all probability be occupied by squatters. Even their use on a more organised basis for housing purposes would not protect the Government from criticism; it would not be regarded as creditable that the Government, after many years in office, should find it necessary to convert surplus military accommodation of this kind for use by homeless families.

(c) Clear and specific pledges had been given by the Government on many occasions that as soon as occupation by the United States Air Force had ceased the buildings would be demolished and the park restored for public use and enjoyment. Criticism of the Government, if they were now to act in breach of those pledges, would be widespread and would not be confined to local residents.

(d) The Service Departments had no reserve of accommodation in this country in which to house units which might have to be withdrawn from overseas. The possible use of the buildings at Bushy Park in this connexion should be urgently examined.

(e) There would be no question of removing the recreational facilities, including a running track and tennis courts, which the United States Air Force had installed. It might be possible to devise a more elaborate and imaginative scheme for making use of some, at least, of the buildings in Bushy Park as part of a recreational centre.

Summing up the Prime Minister said that a majority of Ministers clearly accepted the impracticability of using the buildings in Bushy Park for housing purposes or for some such purpose as a teacher training college. Apart from the pledges which the Government had already given, legislation would be involved. It was nevertheless unpalatable that, at a time when accommodation of every kind was at a premium, the Government should demolish these buildings at considerable expense. Some more constructive alternative should be looked for. He would arrange for an urgent examination of the possibility of retaining the buildings for contingent use by the Services, in the light of the very serious shortage of reserve barrack accommodation in the country as a whole. Subject to the results of this examination it would be right to make the maximum use of such buildings as might be suitable for recreational purposes. The object should be to produce an imaginative and constructive scheme which would command public support. Any buildings which could not be used as part of such a scheme would have to be demolished.

The Cabinet—

(1) Took note that the Prime Minister would arrange for an urgent examination of the possibility of using the buildings in Bushy Park, which had been vacated by the United States Air Force, for some military purpose.

(2) In the light of the results of this examination invited the Minister of Public Building and Works, in consultation with the other Ministers concerned, to prepare a scheme for making the most of the site, and of such buildings as could usefully be retained, for recreational purposes.
5. The Cabinet had before them memoranda by the Chancellor of the Exchequer (C. (62) 179) and by the Lord Chancellor and the Law Officers (C. (62) 180) on the decision of the Birmingham City and Aston Villa Football Clubs to sue the Board of Customs and Excise for repayment of Pool Betting Duty paid in respect of football pools conducted between 1954 and 1960.

The Chancellor of the Exchequer said that local club supporters' weekly pools, of which those run by Birmingham City and Aston Villa were typical, had at the outset involved no more than the purchase by the individual punter of a numbered card, prize money being distributed to the winning numbers. When it was pointed out to the clubs that pools run on these lines were in fact lotteries and therefore illegal, they had altered the rules under which the pools were run with the intention of turning them into systems of betting. They assumed, and it was implicit in this intention, that the pools would then become liable for Betting Duty. The Customs and Excise also assumed this and the duty was accordingly paid. Later, however, one club, Stockport, had refused to pay the duty; the Customs and Excise had felt obliged to sue and the Court had held that pools of this kind did not in fact constitute betting systems and that no tax was payable. The Government had rectified the anomaly in the Finance Act, 1961, but had refused to refund duty which had been collected before the Stockport judgment. Birmingham City and Aston Villa were now suing for such a refund. The amount immediately at stake was about £2 million, but if all the other football clubs followed suit the total amount involved would be £7 or £8 million.

The Chancellor of the Exchequer said that in his view there was no moral or legal obligation on the Government to pay. In the first place, it was worth noting that in so far as clubs were reclaiming repayment because their pools had not involved betting, they were admitting them to have been lotteries and therefore illegal. It was odd, to say the least, that the Government should be contemplating the repayment of large sums of money in respect of admittedly illegal transactions by private organisations. Secondly, the defence that there had been a mutual mistake of law was valid and he considered that it should be pleaded; the Law Officers held that this defence could not be used unless it had first been established that any sums repaid to the clubs could not be distributed by them in turn to those who had borne the original burden of the duty. The Law Officers held that this burden has been borne by the prizewinners and that the clubs should therefore be asked to say whether they could identify the prizewinners. In his own view, as a matter of fact rather than a matter of law, the burden of duty had been borne by the individual punters who could manifestly not be identified. There was a parallel here in the case of entertainment duty; the burden of entertainment duty had clearly been borne by the individual theatregoer, since the duty had been reflected in the price of the ticket. He appreciated the difficulty in which the Law Officers found themselves, but in the last resort the responsibility for a decision must rest with the Minister immediately concerned; he was fully prepared to take the decision to use the defence of a mutual mistake of law in the present case and to accept responsibility for it.

The Lord Chancellor said that he saw the position differently. There could be no doubt that in the case of these particular pools the Revenue had illegally extracted duty and there was a corresponding obligation on them to repay it. A rather similar case had arisen soon after the end of the war when the Customs had been sued for the return of money paid as purchase tax. Mistake of law had been pleaded in defence and the Judge had remarked that this defence was one which in his view ought to be used with great discretion. Following discussion in Parliament the then Lord Chancellor had in
1949 committed the Government to following a consistent policy in questions of this kind. The essence of that consistency was that the defence of a mistake of law would only be sanctioned if the Law Officers could be satisfied that the money, if repaid, would not get back into the hands of those who really bore the burden of paying it. What worried him about the present case was that there had been no effort to establish whether or not this condition could be fulfilled, *i.e.*, whether the clubs could identify the prizewinners who, in his view, and that of all the Law Officers who had considered this question over a period of years, were those on whom the burden of paying the duty had fallen. He thought it very likely that the clubs would not be able, after so long a lapse of time, to identify the prizewinners. In that case the defence of mistake of law could be pleaded and the policy of consistency would have been maintained; if on the other hand this defence were to be pleaded, despite the absence of information which would justify it, then in his view it would be necessary to relieve the Law Officers of their present duty to secure consistency of policy and Parliament would have to be informed in that sense. He also thought it right to remind the Cabinet that in 1961 the then Solicitor-General, in dealing with these particular cases, had given an assurance in Parliament that the policy of consistency would be maintained.

In discussion several Ministers expressed the view that the question whether the burden of duty had been borne in the first place by the prizewinners or by individual punters might reasonably be considered to be a matter of fact, and therefore of individual judgment, rather than a matter of law. The view that the burden had been borne by the prizewinners was supported by the rules of the Stockport Club which provided that any under-payments or over-payments in such matters as administration expenses would be reflected in the amount of the prizes; on the other hand, the wording of the relevant Act could be held to support the view that the duty was levied on the initial contribution and that to this extent its burden was borne by the individual contributor. The view was also strongly expressed that in the absence of any moral obligation, particularly since the basis of the claim by the football clubs was tantamount to an admission that their pools had been lotteries and therefore illegal, it would be right to decide the issue on broad grounds of commonsense; there could be no doubt that the clubs had in fact no intention of repaying any sums they might recover either to their supporters or to the prizewinners. As against this, however, it might well be the case that the clubs would be unable to identify all the prizewinners and that a request to them to do so would provide full justification for pleading the defence of mistake of law. Considerable embarrassment might, however, be caused if the clubs were able to identify some, but not all, of the prizewinners or if one club could identify them and the other could not.

Summing up the Prime Minister said that he fully appreciated the difficulty which the Law Officers saw in proceeding on the lines which the Chancellor of the Exchequer had suggested and the embarrassment in which they believed that such a decision would place them. Nevertheless, the trend of the discussion had shown that there was a considerable measure of support in the Cabinet for the object which the Chancellor of the Exchequer was seeking to secure and on practical grounds there was much to be said for his proposal. He hoped that the Cabinet would allow him to consider the lines of a possible compromise, in consultation with the Chancellor of the Exchequer and with the Law Officers. To this end he would be grateful if the Lord Chancellor and the Law Officers could arrange for the drafting of the kind of letter which in their view it would be right to send to the two football clubs concerned; he assumed that
such a letter could be sent without prejudice and that it could be
drafted in such a way as to make it improbable that the clubs could
so reply to it as to strengthen the chances of their suit succeeding.
When such a draft had been prepared he would consider the matter
further.

The Cabinet—

(1) Invited the Lord Chancellor, in consultation with the
Chancellor of the Exchequer and the Law Officers, to
arrange for the preparation of a draft letter to the
Birmingham City and Aston Villa Football Clubs on the
lines indicated by the Prime Minister in his summing up.

(2) Took note that in the light of this draft the Prime Minister
would, early in the following week, consider the matter
further in consultation with the Ministers immediately
concerned.

Cabinet Office, S.W. 1,