CONCLUSIONS of a Meeting of the Cabinet held at 10 Downing Street, S.W.1. on Friday, 3rd January, 1969 at 10 a.m. and 2.45 p.m.

Present:

The Right Hon. HAROLD WILSON, M.P., Prime Minister
The Right Hon. MICHAEL STEWART, M.P., Secretary of State for Foreign and Commonwealth Affairs
The Right Hon. LORD GARDINER, Lord Chancellor
The Right Hon. BARBARA CASTLE, M.P., First Secretary of State and Secretary of State for Employment and Productivity
The Right Hon. DENIS HEALEY, M.P., Secretary of State for Defence
The Right Hon. ANTHONY CROSLAND, M.P., President of the Board of Trade
The Right Hon. GEORGE THOMSON, M.P., Minister without Portfolio
The Right Hon. ANTHONY WEDGWOOD BENN, M.P., Minister of Technology
The Right Hon. ANTHONY GREENWOOD, M.P., Minister of Housing and Local Government
The Right Hon. LORD SHACKLETON, Lord Privy Seal
The Right Hon. ROY MASON, M.P., Minister of Power

The Right Hon. ROY JENKINS, M.P., Chancellor of the Exchequer
The Right Hon. RICHARD CROSSMAN, M.P., Secretary of State for Social Services
The Right Hon. JAMES CALLAGHAN, M.P., Secretary of State for the Home Department
The Right Hon. FRED PEART, M.P., Lord President of the Council
The Right Hon. WILLIAM ROSS, M.P., Secretary of State for Scotland
The Right Hon. EDWARD SHORT, M.P., Secretary of State for Education and Science
The Right Hon. RICHARD MARSH, M.P., Minister of Transport
The Right Hon. CLEDWYN HUGHES, M.P., Minister of Agriculture, Fisheries and Food
The Right Hon. GEORGE THOMAS, M.P., Secretary of State for Wales
The Right Hon. JUDITH HART, M.P., Paymaster General
The Right Hon. JOHN DIAMOND, M.P., Chief Secretary, Treasury

The following were also present:

The Right Hon. FREDERICK LEE, M.P., Chancellor of the Duchy of Lancaster
Sir ARTHUR IRVINE, Q.C., M.P., Solicitor-General
The Right Hon. JOHN SILKIN, M.P., Parliamentary Secretary, Treasury

Secretariat:

Miss J. J. NUNN
Mr. R. R. D. MCINTOSH
Sir ROBIN HOOPER
Mr. H. L. LAWRENCE-WILSON
Mr. J. CROCKER
Mr. P. E. THORNTON
Miss S. W. FOGARTY
## CONTENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>INDUSTRIAL AFFAIRS</strong></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>A Policy for Industrial Relations: Draft White Paper</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td><strong>COMMONWEALTH IMMIGRATION</strong></td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>United Kingdom Passport Holders in Kenya and Uganda</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td><strong>RACE RELATIONS</strong></td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>United Nations Convention on Racial Discrimination</td>
<td></td>
</tr>
</tbody>
</table>
1. The Cabinet considered a memorandum by the First Secretary of State and Secretary of State for Employment and Productivity (C (68) 131) covering the draft of a White Paper on a Policy for Industrial Relations.

The Prime Minister said that in the previous summer the First Secretary had entered into consultations with the Trades Union Congress (TUC) and the Confederation of British Industry (CBI) on the broad issues arising from the report of the Royal Commission on Trade Unions and Employers’ Associations (the Donovan Commission). She had then begun to formulate proposals for Government action which had been considered, with particular reference to their legal implications, at two meetings of a small group of Ministers directly concerned. He had thought it advisable, following the procedure which had been successfully adopted in the past for prices and incomes policy, that the First Secretary should have further consultations with the TUC and CBI before making recommendations to the Cabinet. Formal consultations had accordingly been initiated on 30th December. The TUC, however, had not yet been able to give the First Secretary their considered comments on her proposals. He proposed that at this meeting the Cabinet should consider the main issues arising on her memorandum and should examine the draft White Paper, but that they should not attempt to reach any formal decisions at this stage.

The First Secretary of State said that, while the report of the Donovan Commission had provided a most valuable basis for changes in industrial relations, she considered that it would be mistaken to proceed simply on the basis that each of the Commission’s individual recommendations had either to be accepted or rejected. There were some weaknesses in the Commission’s report. In particular, the report had failed to analyse adequately the developing role of trade unions; and its analysis of the problems of collective bargaining in industry was dominated by experience in the engineering and motor vehicle industries. As regards the role of the law in industrial relations, the Donovan Commission had stressed that collective agreements were not at present generally in a form which could be legally enforced, but pointed out that when their form improved they might be made legally enforceable by statute. In consequence, the recommendation to establish a Commission on Industrial Relations (CIR) to improve the form of collective agreements, while highly desirable in itself, had aroused great suspicion amongst many trade unionists. The CBI had made plain their wish to make all such agreements statutorily enforceable. The proposals in the draft White Paper gave greater safeguards to trade unions in this respect than did…
those of the Donovan Commission. The role of the law in industrial relations would, under her proposals, be strictly limited for both moral and practical reasons.

First, the present barrier to the direct legal enforcement of collective agreements between an employers' association and a trade union would be removed by modification of Section 4 (4) of the Trade Union Act 1871, but the draft White Paper made it clear that the Government had no intention of bringing pressure to bear to make collective agreements legally enforceable.

Secondly, many of the problems arose from the weakness rather than the strength of the trade unions. It was proposed accordingly to provide a statutory right to all to belong to trade unions and to take steps to assist trade unions to obtain recognition in individual firms and factories. The proposed Trade Union Development Scheme was also intended to assist in the improvement of the structure and facilities of the trade union movement.

Thirdly, it was proposed to provide legal sanctions to defend the rights of the community as a whole in certain strictly limited and closely defined fields. The Secretary of State for Employment and Productivity would be given a discretionary power to require a maximum of 56 days postponement of unconstitutional strikes. During this pause for conciliation the terms of employment to be observed would be those which existed before the dispute arose, so that the delay would not protect an employer who took provocative action. This discretionary power would be exercised only in situations where it was likely to be of practical value and acceptable to public opinion. The Secretary of State would also be given discretionary powers to ensure that members were consulted by ballot, as the rules of a large number of unions already provided, before being brought out on strike. There would also be powers to enforce (by the imposition of fines on employers and/or unions) the recommendations of the CIR on inter-union disputes.

Fourthly, trade unions would be required by the Industrial Relations Bill to register with a new Registrar of Trade Unions and Employers Associations, and registered unions would be required to have rules, of their own framing, governing admission, discipline, elections, strike ballots, and so on.

Finally, an independent review body was proposed to hear complaints by individuals of unfair or arbitrary action by unions, and if complaints were found to be justified the review body would have power to award damages or admission or reinstatement in a union.

The First Secretary of State said that the TUC and CBI had been informed of these proposals at the beginning of the week. The CBI had said that the proposals were totally inadequate without provision for the legal enforcement of collective agreements. They
had welcomed the proposed Trade Union Development Scheme, but
were concerned about the provision for maintenance of the status quo during the pause for conciliation imposed in unofficial strikes.
The Financial and General Purposes Committee of the TUC had been unable to give the TUC's final comments, since the proposals were to be considered by the General Council on 7th January. But informally it was clear that there were three main points of difficulty for the unions. They objected to provision for compulsory strike ballots; for a conciliation pause in the case of unconstitutional strikes; and for the CIR to make enforceable recommendations in inter-union disputes. They had, however, welcomed many of the proposals. She would hear the final views of the TUC at a meeting which she had arranged for the afternoon of Wednesday, 8th January.

The Cabinet considered in order the issues raised in the First Secretary's memorandum.

Theme of the Draft White Paper

It was suggested that the White Paper should give much greater emphasis to the importance of developing more effective negotiating machinery and disputes procedure in industry. The basic theme of the Donovan Commission was that the root of the present troubles in industrial relations was the absence of effective procedures for the rapid and equitable settlement of grievances, and that this lack should be made good as quickly as possible. The proposal in the draft White Paper to use legal sanctions to deal with strikes was misconceived and the draft gave no satisfactory answer to the Donovan Commission's objections to such a step. The record of industrial disputes in the United Kingdom, given in Appendix 2 of the draft, showed that it compared favourably with that of most other countries. This fact too should be given greater emphasis in the draft, and it largely undermined the case for legal sanctions. They should consider very carefully the political and other consequences of introducing legal sanctions to deal with strikes in disregard of the Donovan Commission's recommendations.

In further discussion, it was suggested that, while most of the proposals in the White Paper would be generally acceptable, there was one very important area in dispute—the role of the law in industrial relations. There were four possible courses in this disputed area. First, they could adopt the majority recommendations of the Donovan Commission to the effect, broadly, that the CIR should be established, in the first place without legal powers or sanctions, to work for the speedy reform of existing arrangements for collective bargaining; and only if this voluntary approach failed should consideration be given to providing the CIR with statutory powers. Secondly, they could follow Mr. Shonfield's recommendations in his
note of reservation to the report of the Donovan Commission and establish a CIR with considerable statutory and quasi-judicial functions and powers. Thirdly, there was the possibility of providing for legal enforcement of all collective agreements, as proposed by the CBI and operated in many other countries. Finally, there were the proposals in the draft White Paper for combining action by the CIR on a voluntary basis to improve bargaining machinery with the provision of certain legal sanctions; in particular, discretionary legal powers to the Secretary of State to require strike ballots before official strikes and postponement of unconstitutional ones and to enforce the CIR's recommendations in inter-union disputes. The Cabinet should be in a position to consider fully the arguments for and against these different courses before taking a decision on a matter of such crucial importance, and the White Paper should also set out the various arguments much more fully than at present.

On the other hand, it was pointed out that, while the White Paper could certainly be amended to give greater emphasis to the importance of reforming the present machinery of industrial negotiation, it was unrealistic—particularly against the present serious economic background—to wait for the voluntary reform of this machinery to put an end to the numerous strikes which were started unconstitutionally, often by a handful of men, without adequate cause but with crippling effects on the economy.

The Prime Minister, summing up this part of the discussion, said that the First Secretary should circulate a paper for consideration by the Ministerial Committee on Industrial Relations at the beginning of the following week. The paper should set out the arguments for and against the four different roles of the law in collective bargaining which had been outlined in their discussions. The Committee on Industrial Relations should then report their conclusions to the Cabinet. The draft White Paper would require to be amended in any event to set out more fully the arguments for and against the various possibilities; and, if possible, to give greater emphasis to the importance which the Government attached to speedy reform of the present arrangements for collective bargaining in industry.

The Cabinet—

(1) Invited the First Secretary of State to arrange for the Ministerial Committee on Industrial Relations to consider at the beginning of the following week a report on the lines indicated by the Prime Minister and to report thereafter to the Cabinet.

(2) Invited the First Secretary of State to arrange in due course for amendment to the White Paper on the lines indicated in the summing up.
Commission on industrial relations

In discussion, it was argued that Mr. Shonfield’s minority recommendation that the CIR should be given certain quasi-judicial functions and statutory powers deserved further consideration. If the CIR were given substantial statutory powers, there would be little or no case for the proposed legal sanctions to deal with strikes. On the other hand, it was argued that it was not possible to compel two parties to reach an agreement against their wishes, so that statutory powers would not in practice enable the CIR to improve procedure agreements more rapidly and effectively. Moreover, if the CIR were given wide statutory powers, it would reduce its effectiveness in its voluntary role of improving machinery of collective bargaining. The group of Ministers which had been considering the draft White Paper had concluded that, while the CIR should begin its operations on a voluntary basis, the Government should consult with the industrial organisations concerned about the possibility of providing reserve powers in the Industrial Relations Bill. These statutory powers could be invoked on the initiative of the Secretary of State for Employment and Productivity, following a report by the CIR, if experience showed that a completely voluntary system had not proved fully effective.

The Prime Minister, summing up this part of the discussion, said that a decision on the powers and responsibilities of the CIR could not be finally taken before the Cabinet had considered the report referred to in conclusion (1) above.

The Cabinet—

(3) Took note, with approval, of the Prime Minister’s summing up.

Registration of agreements

The Cabinet

(4) Invited the First Secretary of State to consider with the Lord Privy Seal whether the requirement to register procedure agreements should apply to the Civil Service and to the Post Office.

Disclosure of management information to trade unions and employee participation

It was pointed out in discussion that the proposals for providing more information and for removing the legal barriers to the appointment of trade union representatives to company boards would involve significant changes in company law, which would require
detailed consideration. It should be borne in mind that the work of the joint working group drawn from members of the Government and the National Executive Committee of the Labour Party, on company law in relation to the role of large companies, was also relevant.

The Prime Minister, summing up this part of the discussion, said that the group of Ministers which had considered the draft White Paper had concluded that paragraph 44 should make clear that the Government had decided that more information should be made available to employees' representatives and intended to consult further about the implementation of this decision, and that paragraph 45 should make clear that the provisions in the Industrial Relations Bill relating to trade union representation on company boards would make this development possible but not mandatory. The existence and relevance of the Labour Party study might be made clear at a Press conference when the White Paper was published.

The Cabinet—
(5) Took note, with approval, of the Prime Minister’s summing up.

Trade union membership: recognition, inter-union disputes

In discussion, it was suggested that the proposed legal sanctions to seek to enforce the recommendations of the CIR on inter-union disputes would provoke bitter opposition and yet prove totally ineffective. On the other hand, there was a wide measure of support for the First Secretary’s proposals. They gave the TUC an opportunity to resolve the inter-union disputes before the CIR or legal sanctions were introduced, and public opinion generally would fully support the firm line being taken against the disruptive effects on our economy of stoppages resulting from demarcation and other disputes between unions.

The Cabinet—
(6) Agreed to consider these proposals further in the light of the report referred to in conclusion (1) above.

Trade union development scheme

In discussion it was agreed that these powers would be particularly important in relation to the training of trade union officers and to the development of their research facilities which should be given further emphasis in the draft White Paper. While the proposals might be helpful to the CIR in bringing about some restructuring of the unions parallel to the industrial restructuring undertaken by the Industrial Reorganisation Corporation (IRC), its direct effect in this field might be limited. There were real problems
of public accountability which would need to be carefully considered when the proposed legislation was drafted; the precise purposes for which funds might be used would have to be set out.

The Cabinet—

(7) Approved the proposals referred to in paragraph 16 of C(68)131.

**Strikes—compulsory ballots**

In discussion some fears were expressed that the proposed compulsory ballot before certain major official strikes might be rarely used and ineffective. The proposal would, however, provoke strong opposition in the trade unions and among the Government's supporters generally, and this might jeopardise the success of the other constructive proposals in the draft White Paper. The TUC were apparently even more opposed to this proposal than to the compulsory pause for conciliation in unconstitutional strikes. On the other hand it was argued that there was no foundation for these fears. The proposal was for a reserve discretionary power which would be used only where a strike would damage the economy and there was doubt about the support it commanded. It was not intended to prohibit strikes but to allow members to express their views before an official strike took place, and the draft White Paper would make this clear. The risk that, if the result of a ballot were in favour of a strike, the leadership would find it more difficult to reach a settlement, could be overcome; the White Paper would be revised to make it clear that the union would be free to provide in its rules that the executive could defer or call off a strike which had been agreed by ballot without the need for a further ballot. While it was important to stress in the White Paper that many unions already included in their rules provision for balloting their members before a strike, it was not the intention to insist that all unions should adopt this practice. The new Registrar of Trade Unions and Employers' Associations would have to be satisfied when registering a union that its rules made provision for the proper conduct of any ballot that might be held. While there would be sanctions against any union which refused to hold a ballot when required to do so, there would be no sanctions against any union which went forward with strike action contrary to the majority view of its members.

In further discussion it was agreed that the First Secretary of State should explain in her memorandum to the Ministerial Committee on Industrial Relations why she had rejected the recommendation of the Donovan Commission against compulsory ballots. The Commission had examined this point in detail but had
found no evidence to suggest that such a power would serve any useful purpose. On the other hand the Commission had reported before the threatened national strike in the engineering industry; and it must be recognised that while major official strikes were rare, and in some ways a less serious problem than local and unofficial strikes, they could do very considerable harm to the economy, as the seamen’s strike in 1966 had done.

The Committee—

(8) Invited the First Secretary of State to explain, in her memorandum to the Ministerial Committee on Industrial Relations, why she had rejected the recommendation of the Donovan Commission against compulsory ballots of union members prior to official strikes.

Strikes—pause for conciliation

The First Secretary of State explained that the proposed power to require a maximum of 56 days’ postponement in the case of unconstitutional strikes would be discretionary. It would not be invoked in respect of very short strikes or those which had no serious repercussions. With the growing inter-dependence of industry, however, comparatively small groups of men could abuse their power and throw many thousands of others out of work, and could cause inconvenience or hardship to the public and substantial damage to the economy. It was right that there should be a power, not to ban strikes, but to provide a breathing space in which the normal procedures of negotiation, or if necessary a court of inquiry, could operate. The proposal related only to unconstitutional or irregular strikes in which, by definition, the procedures agreed and supported by the unions concerned had not been followed; they ought therefore to welcome the proposal which would strengthen their hands. The proposed power could, however, be invoked even where a union called an official strike without having exhausted the normal procedures, and it would make no difference if a strike were declared official after it had started.

The Lord Chancellor explained the new proposals for enforcing this provision and those described in paragraphs 54 (union recognition), 81 (compulsory ballots) and 98 (union registration) of the draft White Paper. A new Industrial Board would deal with these cases. It would sit in panels of three, consisting of the President of the Industrial Court or one of the independent legal members, together with two trade unionists from the employees’ panel or one trade unionist and one employer, depending on the nature of the case. Whenever more convenient, the Board would sit at the place of dispute. The Board could impose financial penalties recoverable through the county courts and by attachment of wages, but without
liability to imprisonment in default of payment or on account of failure to obey an order. This proposal had been discussed with the President of the Industrial Court who considered it practicable. One great advantage would be the ease with which proceedings could be discontinued if there were a settlement or a return to work. A new section would be added to the White Paper to explain this proposal.

In discussion, considerable doubt was expressed about the effectiveness of the proposal. Normally the men would already be on strike when the procedure was invoked. They could evade an order and any penalties for defying it by giving notice, and even if they went back to work there was no way of ensuring that they worked normally. The Donovan Commission had carefully considered the question of legal sanctions; was there any evidence that they were wrong or that these powers would be any more enforceable than the wartime ones invoked in the Betteshanger Colliery case? Similarly, was there any real evidence that these powers would be more effective than the Taft-Hartley Act had proved to be in the United States? Once the power was available, the First Secretary of State would be under constant pressure to invoke it; and if the first major case was one, such as a Liverpool dock strike, in which it could not be enforced, the deterrent effect would be lost. Was it worth risking the difficulty and the loss of goodwill within the unions and the Labour Party which the proposal would entail?

On the other hand, it was argued that it was essential to take powers to deal with strikes such as the recent stoppage at Girlings (Cwmbran), which caused serious damage to other industries and to the economy generally? In the long term there might be less need for this power as the CIR brought about an improvement in procedures in industry generally, as had already been done with very good results in the coal industry. In the meantime, however, while it could not be proved that the provision would be effective, there was a good chance that it would reduce the number of “wildcat” strikes.

The difficulties of enforcement should not be exaggerated, and psychologically the existence of the power might make men more careful. It would be a discretionary power which would be invoked only in cases where it was expected to be enforceable, where no settlement was in sight, where public opinion was likely to be in favour, and, in the majority of cases, where the action should be supported by the union as strengthening their hand in getting the cause of the dispute considered through the agreed procedures. While every extension of Government intervention in industrial affairs needed to be examined carefully, it must be remembered that unofficial strikers
were themselves interfering with other workers, the public and the economy in general. Although in theory the responsibility for avoiding disruption should rest with the employers, in practice the strikes at which this power was aimed often affected others far more seriously than the immediate employer, who might well be prepared to pay more to buy off trouble than the economy could stand. The problem of “wildcat” strikes was a very serious one and the Government could not afford to appear to be standing aside from it.

The Prime Minister, summing up this part of the discussion, said that the need for the proposed power might well diminish in the long term. Recently, however, unofficial strikes had become a more serious problem because the unions no longer refused to negotiate until the men returned to work and the men no longer automatically returned when a court of inquiry was appointed. Serious economic damage was being caused. The Ministerial Committee on Industrial Relations should examine further the arguments for and against taking the proposed new power, and the likelihood of its being effective, in the light of the points made about enforceability. The Lord Chancellor should circulate to the Committee a memorandum setting out his proposals for enforcement through a new Industrial Board. The First Secretary of State should also circulate a short memorandum which might explain how the procedure would work in a typical case, the meaning of “unconstitutional”, and the implications, if any, of a strike being declared official. The memorandum might also indicate how often in a recent period the power might have been invoked and give some examples of the damage caused in particular instances. It should also explain the differences between this proposal and the Taft-Hartley Act in force in the United States together with the reasons for thinking it more likely to prove effective.

The Cabinet—

(9) Invited the First Secretary of State to arrange for the Ministerial Committee on Industrial Relations to consider the matter further on the lines indicated by the Prime Minister in his summing up of the discussion.

(10) Invited the Lord Chancellor to circulate to the Ministerial Committee on Industrial Relations a memorandum explaining his proposals for enforcement.

Strikes and the law

In discussion attention was drawn to the need to protect the position of the Armed Forces, in respect both of this provision and of others including that dealing with trade union recognition.
The Cabinet—
(11) Approved the proposals in paragraphs 18 and 19 of C (68) 131.

Unfair dismissal, etc.
The Cabinet—
(12) Approved the proposals in paragraph 20 of C (68) 131.

Trade union rules and registration
The First Secretary of State said that the TUC were content with these proposals, particularly since it had been agreed that trade unions should not be given corporate status. The CBI, however, had raised the question precisely what body would be registered if there was no incorporation, and this problem was being examined further.

The Cabinet—
(13) Approved the proposals in paragraph 21 of C (68) 131.

An independent review body
The First Secretary of State said that while the TUC had expressed opposition to the idea of an independent review body, they did not feel strongly on the subject. Her legal advisers were in touch with those of the Scottish Office about the implications for Scotland.
In discussion, some support was expressed for the opposition of the TUC.

The Cabinet—
(14) Approved the proposals in paragraphs 22 and 23 of C (68) 131.

The Prime Minister, summing up the discussion of C (68) 131 as a whole, said that most members of the Cabinet seemed to be in favour of the First Secretary's proposals for compulsory ballots though some members were still opposed to it and others preferred to suspend judgment for the time being. Opinion on the proposal for a compulsory pause for conciliation was more evenly divided, and the arguments for and against it would need to be examined again when further consideration had been given to the alternative proposals in Mr. Shonfield's note of reservation to the Donovan Report. The Ministerial Committee on Industrial Relations would meet early in the following week to consider memoranda by the First Secretary of State (which would also be circulated to the Cabinet) on this and other related issues and to examine the text of the draft White Paper.
The Cabinet would resume their discussion of the First Secretary's proposals and the draft White Paper later in the week, when they would be able to take account of the Ministerial Committee's discussion and of any further views expressed by the TUC. In view of the continuing Press speculation on the subject they should aim to publish the White Paper as soon as possible after the TUC's considered views were known and before the end of the Parliamentary Recess. But no decision should be taken at this stage about the date of publication nor should anything be said about it in public which would in any way limit the Cabinet's freedom to choose between the various alternative courses of action which had been proposed.

In the meantime, the First Secretary of State should continue her discussions with the TUC on the same basis as before. She should make it clear, without implying that any radical changes in her proposals were contemplated, that the Cabinet had not yet reached any decisions on them, and would not do so until they had heard the TUC's considered views. Other members of the Cabinet should refrain from entering into any discussion of these matters with the TUC or CBI and if approached about the First Secretary's proposals they should avoid saying anything which might weaken her position in her own discussions with them.

The timing of legislation would need further consideration. Some anxiety had been expressed about the prospect of a long delay between the publication of the White Paper and the introduction of a Bill to implement the proposals in it. On the other hand the Bill would necessarily be long and complex, and it was difficult to see how it could be ready for introduction before October 1969. The Lord President should circulate a memorandum to the Cabinet on the possibility of introducing legislation in the current Session.

The Cabinet—

(15) Took note, with approval, of the Prime Minister's summing up of their discussion.

(16) Invited the Lord President, in consultation with the First Secretary of State, to circulate to the Cabinet a memorandum on the possibility of introducing legislation in the current Session.

(17) Invited the Paymaster General, in consultation with the First Secretary of State and the Chancellor of the Duchy of Lancaster, to arrange for the preparation of speaking notes on the issues involved for the use of Ministers when the White Paper was published.
2. The Cabinet considered memoranda by the Home Secretary (C (68) 130) and by the Foreign and Commonwealth Secretary (C (68) 133) on United Kingdom Passport Holders in Kenya and Uganda.

The Home Secretary said that there was a possibility that an additional wave of United Kingdom passport holders might seek to enter this country from East Africa in 1969, because the Government of Kenya did not renew their work permits and because of legislative action under consideration by the Government of Uganda designed to reduce drastically the Asian population in that country. In addition, there was a contingent problem of the same kind in the South Yemen, though the latest (but still tentative) estimate of the numbers involved there was 7,500 and not the 30,000 mentioned in C (68) 130. It was impossible to estimate at all accurately how large the influx might be, but it could exceed substantially the numbers of special entry vouchers available for this class of immigrant, and at worst might increase total Commonwealth immigration into this country to 90,000 or more in 1969. This would happen at a time when it appeared that Commonwealth immigration would otherwise no longer continue to increase and might even begin to decline. No policy decisions were required on the handling of this problem at the present meeting, but it was necessary to decide on the line to be taken in bilateral discussion of it with the representatives of the Commonwealth countries concerned during the forthcoming meeting of Commonwealth Prime Ministers. Our objectives in these discussions should be to persuade the Governments of Kenya and Uganda to slow down the flow of Asian migrants; to consider with "old" Commonwealth countries the possibility that they might accept some immigrants from East Africa; and to secure the continuance of the arrangements with the Government of India under which migrants from Kenya who were citizens of the United Kingdom and Commonwealth but who wished to settle in India were allowed to do so on the understanding that they retained their right to enter this country later if they wished. We should not accept the proposal that had been made for an increase from 1,500 to 2,000 in the number of special vouchers for Asians from East Africa.

The Foreign and Commonwealth Secretary said that, in addition to the approaches to Commonwealth countries proposed by the Home Secretary, we should let it be known to countries whose citizens were entering under the main voucher scheme that our prior responsibility was to those entitled to United Kingdom passports and that if we were pressed too hard the numbers of entrants under the normal scheme might have to be reduced. We should also make it plain to...
the representatives of Uganda at the Commonwealth Prime Ministers' Conference that we were not prepared to accept Asian immigrants from Uganda at a rate of their choosing.

In discussion, there was general agreement with the proposals of the Home and Foreign and Commonwealth Secretaries. A pledge had been given in Parliament during the Committee stage of the Commonwealth Immigrants Bill on 28th February, 1968, that if holders of United Kingdom passports were expelled from their countries of residence, they would be allowed to come to this country. Our aim must be to prevent any new influx of immigrants from becoming so large that it could not be accommodated by adjustments elsewhere in Commonwealth immigration, but no decision should be taken at this stage whether any new influx should be wholly accommodated in this way. One possible way of providing additional vouchers for Asians from East Africa was by reducing substantially the numbers allocated to doctors under the main voucher scheme. Although these doctors were of benefit to the National Health Service in the short run, there would be structural and promotion problems in the Service in the longer term if they were to enter in the very large numbers that were now in prospect.

*The Prime Minister,* summing up the discussion, said that the Cabinet approved the proposals of the Home and Foreign and Commonwealth Secretaries for handling the problem of additional immigrants from East Africa in discussions during the Commonwealth Prime Ministers' Conference. When the outcome of these discussions was known, the Cabinet would wish to consider the policy issues involved. They were not disposed at present to increase the total number of immigrants, but if it were possible to reduce the number of doctors admitted under the scheme the vouchers thus made available could be used for the admission of additional Asian holders of United Kingdom passports from East Africa. In the meantime, inter-departmental contingency planning should continue in the light of their discussion.

The Cabinet—

Took note, with approval, of the Prime Minister's summing up of their discussion.

*CONFIDENTIAL*

3. The Cabinet considered a memorandum by the Home Secretary (C (68) 132) on whether ratification of the United Nations Convention on the elimination of all forms of Racial Discrimination should be accompanied by a reservation in respect of the Commonwealth Immigrants Acts 1962 and 1968.
The Home Secretary said that the Cabinet had decided in September 1966 in favour of signing the Convention, subject to a reservation about Rhodesia, leaving the question of ratification for subsequent consideration; the Convention was signed in the following month. The Home Affairs Committee considered the question of ratification at their meeting on 13th December, 1968, and concluded that the United Kingdom should ratify the Convention subject to a further reservation in respect of the Commonwealth Immigrants Acts, 1962 and 1968 and that the Government's intention to ratify should be announced at an early date. The principle of ratification was not in dispute, and it had been announced in a Written Answer on 19th December that it was hoped to deposit the Instrument of Ratification early in the New Year. He had, however, felt bound to reserve his position on the need for a reservation to cover our Commonwealth immigration legislation and it was on this point that he now sought his colleagues' views.

They had to choose between two courses each of which held some likelihood of embarrassment. If the Convention were ratified without reservation in respect of the Commonwealth Immigrants Acts it would be open to any State Party at any time to complain formally that we were not giving effect to the provisions of the Convention and to carry the issue to the International Court of Justice for decision. If the Court found the Acts to be incompatible with the Convention we would then have either to denounce the Convention or repeal the offending provisions. If on the other hand we ratified with a reservation in respect of the Acts there would be a period of ninety days within which any State Party could object to the reservation, and if two-thirds of the Parties objected, the reservation would be regarded as incompatible with the Convention; but otherwise the Acts would be secure from further challenge. His objection to entering a reservation was that it appeared to constitute an admission that the Acts were racially discriminatory whereas the Government had consistently maintained that they were not. For this reason he thought that the better course was to ratify without reservation on this point.

In discussion it was pointed out that the form of reservation proposed by officials was in no sense an admission that the Acts were discriminatory; on the contrary it expressly reaffirmed the view of the Government that they were not. Entering a reservation might be thought to betray some lack of confidence by the Government in their case, but the fact had to be faced that many people both at home and abroad were convinced that the Acts were discriminatory. If a reservation were entered it would be subject to challenge for only ninety days, and a careful appraisal showed that it was extremely
unlikely that the two-thirds majority needed to invalidate it could be obtained. If on the other hand we ratified without reservation, we would be open to challenge at any time by any single State Party; and the Government were advised that there was a substantial risk that the International Court would find against us if the issue came before it. The consequences of an adverse decision would be very serious, whether we repealed the Acts or took the (for us) unprecedented step of denouncing the Convention. It was for these reasons that the Home Affairs Committee had concluded, after extensive discussion, in favour of ratification with the proposed reservation; this accorded with the views of the Minister of State at the United Nations.

The Prime Minister, summing up the discussion, said that the general feeling in the Cabinet was in favour of ratification with a reservation to cover the Commonwealth Immigrants Acts. The form of words proposed maintained the Government’s position that the Acts were not discriminatory and this being so it did not seem worth running the risks associated with ratification without the reservation; these risks would be increased if pressure to enter this country grew.

The Cabinet—

Agreed that ratification of the United Nations Convention on the elimination of all forms of Racial Discrimination be subject to a reservation in the terms proposed in respect of the Commonwealth Immigrants Acts 1962 and 1968.

Cabinet Office, S.W.1,
3rd January, 1969